

*Appendix 28: Comments Received by EPA  
on the Draft EIS and EPA's Responses to  
Comments*

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**Appendix 28**  
**Comments Received By EPA on the Draft EIS**  
**and EPA's Responses to Comments**

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## NATIONAL SCIENCE FOUNDATION

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March 29, 2001

OFFICE OF THE  
GENERAL COUNSEL

Ms. Katie Biggs  
Office of Federal Activities  
Mail Code 2252A  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460  
Attention: Antarctic Draft EIS Comments

Dear Ms. Biggs:

The National Science Foundation (NSF) is submitting comments on the Draft Environmental Impact Statement (DEIS) for the Proposed Rule on Environmental Impact Assessment of NonGovernmental Activities In Antarctica. We appreciate the opportunity that we have had as a member of your interagency working group to contribute to the DEIS and to provide NSF's views on both the DEIS and the proposed rule.

NSF could support Alternatives 1, 2 or 5 set forth in the DEIS. NSF notes that Alternatives 3 and 4 are inconsistent with the Protocol on Environmental Protection to the Antarctic Treaty and the Antarctic Science, Tourism, and Conservation Act of 1996 (the Act). In addition, the Environmental Protection Agency lacks the statutory authority under the Act to issue regulations incorporating Alternatives 3 and 4. Consequently, NSF believes that neither Alternative 3 nor 4 can constitute the basis for the final rule.

Thank you for the tremendous effort and time that you have spent preparing the EIS and proposed rule. We look forward to the continued opportunity to work with you as these projects progress to completion.

Sincerely,

Anita Eisenstadt  
Assistant General Counsel

Telephone (703) 292-8060

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## RESPONSE TO COMMENTS

Commentor:	
NSF-1	EPA appreciates the assistance provided by the National Science Foundation and the other interested federal agencies with the preparation of the Draft EIS. EPA sought assistance from these agencies, including the National Science Foundation and the Department of State, because of their programmatic and legal interests and responsibilities under the Antarctic Treaty and its Environmental Protocol and the U.S. government's interests under the U.S. Antarctic Program. EPA will continue to coordinate with the National Science Foundation and other interested federal agencies in preparation of the Final EIS and throughout the rule-making process.
NSF-2	EPA notes that the National Science Foundation could support Alternative 2, EPA's preferred alternative.
NSF-3	EPA notes that the National Science Foundation agrees with EPA's analysis of Alternatives 3 and 4.

NSF-1

NSF-2

NSF-3



United States Department of State

*Bureau of Oceans and International  
Environmental and Scientific Affairs*

*Washington, D.C. 20520*

30 March 2001

Mr. Joseph Montgomery and  
Ms. Katherine Biggs  
Office of Federal Activities  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2252A)  
Washington DC 20460  
Attention: Antarctica Draft EIS Comments  
By facsimile 202-564-0072

Dear Mr. Montgomery and Ms. Biggs:

I am writing with respect to the U.S. Environmental Protection Agency's (EPA) Draft *Environmental Impact Statement (EIS) for the Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica*, circulated under cover of a letter of 8 February 2001 from Ms. Anne Norton Miller, Acting Director, Office of Federal Activities. We note that alternatives 3 and 4 include elements that are inconsistent with U.S. Government treaty interpretations and for which there is no existing legislative authority. Alternative 5 may not allow for full implementation of U.S. obligations under the Protocol. With respect to the five alternatives, the Department can support alternatives 1 and 2.

] DOS-1

] DOS-2

] DOS-3

We appreciated the opportunity to work with EPA and other agencies in the preparation of the Draft EIS. Our understanding is that EPA will bear in mind comments provided by the Department of State in writing and otherwise on key issues related to the Antarctic Treaty and its Environmental Protocol, and that such comments will continue to be taken into account in preparation of the final EIS.

] DOS-4

In closing, we thank you very much for the hard work you have put in to the preparation for the proposed rule.

Sincerely yours,

Raymond V. Arnaudo  
Director  
Office of Oceans Affairs

RESPONSE TO COMMENTS

Commentor:	
DOS-1	EPA notes that the Department of State agrees with EPA's analysis of Alternatives 3 and 4.
DOS-2	EPA notes that the Department of State agrees with EPA's analysis of Alternative 5, particularly in that certain of the Alternative's modifications may not allow for full implementation of U.S. obligations under the Protocol.
DOS-3	EPA notes that the Department of State could support Alternative 2, EPA's preferred alternative.
DOS-4	EPA appreciates the assistance provided by the Department of State and the other interested federal agencies with the preparation of the Draft EIS. EPA sought assistance from these interested agencies, including the Department of State and the National Science Foundation, because of their legal and programmatic interests and responsibilities under the Antarctic Treaty and its Environmental Protocol, and the U.S. government's interests under the U.S. Antarctic Program. EPA will continue to coordinate with the Department of State and other interested federal agencies on key issues related to the Antarctic Treaty and its Environmental Protocol in preparation of the Final EIS and throughout the rule-making process.



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Denise Landau  
*Executive Secretary*

April 2, 2001

VIA FACSIMILE (202) 564-0070 AND MAIL

Mr. Joseph Montgomery  
Ms. Katherine Biggs  
Office of Federal Activities  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (MC2252A)  
Washington, D.C. 20460

Draft Environmental Impact Statement for the Proposed Rule on  
Environmental Impact Assessment of Nongovernmental Activities in  
Antarctica

Dear Mr. Montgomery and Ms. Biggs:

I am writing on behalf of the International Association of Antarctica Tour Operators ("IAATO"), the following U.S. member companies — Abercrombie and Kent/Explorer Shipping, Lindblad Expeditions (formerly Special Expeditions), Mountain Travel-Sobek, Clipper Cruise Line/New World Ship Management Company LLC, Quark Expeditions, Society Expeditions, Zegrahm Expeditions, Inc., Cheesemans' Ecology Safaris, Victor Emanuel Nature Tours, LifeLong Learning and Radisson Seven Seas Cruises — and two non-member companies — Orient Lines and Holland America Line Westours — to comment on the Draft Environmental Impact Statement for the Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica, dated February 2001 (the "DEIS"). These comments also reflect the views of IAATO's non-U.S. members.

IAATO-1

As you know, IAATO is a membership organization founded in 1991 to advocate, promote and practice safe and environmentally responsible private sector travel to the Antarctic. IAATO currently has thirty-four members, including fourteen full members, six provisional members, thirteen associate members and one probationary member, from ten different countries. Fifteen IAATO members are based in the United States. A list of IAATO's current members is attached. In the 1999-2000 austral summer, IAATO members, together with Orient Lines and Holland America Line Westours, were responsible for one hundred percent of the organized, ship-based nongovernmental voyages to Antarctica, exclusive of private yacht trips. We thus have the strongest interest in the development and implementation of a sound, workable system for conducting environmental assessments of nongovernmental activities in Antarctica, consistent with the requirements of the Madrid Protocol on Environmental Protection (the "Protocol") and the Antarctic Conservation Act, 16 U.S.C. § 2401, *et seq.* (the "Act").

IAATO-2

On behalf of all the U.S. tour operators and IAATO members, I wish to express our thanks for the multi-year time frame between issuance of the interim final rule and the proposed rule outlined in the DEIS. This has helped to ensure that whatever final rule is adopted by the Environmental Protection

**RESPONSE TO COMMENTS**

**Commentor:**

IAATO-1	EPA acknowledges that IAATO is commenting on behalf of its U.S. member companies (Abercrombie and Kent/Explorer Shipping, Lindblad Expeditions [formerly Special Expeditions], Mountain Travel•Sobek, Clipper Cruise Line/New World Ship Management Company LLC, Quark Expeditions, Society Expeditions, Zegrahm Expeditions, Inc., Cheesemans' Ecology Safaris, Victor Emanuel Nature Tours, LifeLong Learning and Radisson Seven Seas Cruises), two non-member companies (Orient Lines and Holland America Line Westours, Inc.), and IAATO's non-U.S. members. Thus, EPA's response to IAATO's comments indicates a response to all listed parties.
IAATO-2	EPA acknowledges the appreciation expressed for the learning period between the Interim Final Rule and the proposed rule, and appreciates receipt of the information presented about IAATO, its membership, and the Antarctic tour industry for the 1999-2000 austral summer.

CREATING AMBASSADORS TO THE LAST GREAT CONTINENT

Dec. 03 2000 10:52AM PZ

FAX NO. :

FROM :

## RESPONSE TO COMMENTS

Ms. Katherine Biggs  
April 2, 2001  
Page 2

Agency ("EPA") is practical and sensible and there has been an adequate learning period. Over the last four years IAATO has been very grateful for the professional and positive working relationship we've shared with both of you and EPA in general and appreciate your responsiveness, attention to detail and helpfulness on all relevant issues. We also thank you for the previous opportunities in EPA's scoping sessions to comment on various aspects of EPA's mandate under the Act.

Our comments on the DEIS are divided into five parts. First, we explain that, based upon our experience under EPA's interim final rule, we favor regulatory alternative no. 2 (EPA's "preferred alternative"), with several modifications drawn from regulatory alternative no. 5 to reduce paperwork burdens and costs of compliance. Second, we outline why IAATO is strongly opposed to alternatives nos. 3 and 4 which would dramatically expand the substantive reach of the rule and which, in IAATO's judgment, are inconsistent with the requirements of the Protocol and the Act. Third, we provide a brief history of our experience over the past four years and how it relates to the regulatory alternatives under consideration. Fourth, we set out some general comments on EPA's responsibilities under the Act. Fifth, we suggest a number of specific editorial and drafting changes and factual corrections to the DEIS.

### (1) EPA Should Adopt Alternative No. 2, with Modifications Drawn from Alternative No. 5.

On the whole, IAATO supports regulatory alternative no. 2. While in general the interim final rule is working without major problem, we agree with the need to make technical modifications and edits. In addition, we appreciate EPA's willingness to allow multi-year documentation, as had previously been requested by IAATO. Where, as is often the case, operators have the same level of activity year-in and year-out and impacts remain constant, a single multi-year submission is plainly sufficient to meet the requirements of the law. Finally, we do not in principle object to establishing a threshold definition for the phrase "more than minor or transitory," referencing the language in Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C) ("NEPA"). Because there is a well-established jurisprudence under NEPA, this could help ensure that there is greater certainty and consistency in making judgments about the level of environmental documentation required under the Act. However, we question whether such a threshold definition is sensible or necessary at this time. The Antarctic Treaty Parties have not yet defined the phrase. As a result, IAATO believes that it makes the most sense to leave the definition open in the regulations. Proceeding in this fashion will ensure that EPA will retain the necessary flexibility to adopt the formulation that is ultimately agreed to by the Treaty Parties.

We recognize that EPA has decided not to include within its preferred alternative a number of provisions, supported by IAATO in the past, that are designed to ease administrative burdens. These provisions, which EPA sets out in regulatory alternative no. 5 (the "discretionary rule"), would:

- Eliminate EPA's ability to pass on the adequacy of environmental documentation;
- Eliminate the enforcement provision of the interim final rule;
- Eliminate Preliminary Environmental Review Memorandums ("PERMs");
- Provide for automatic reciprocity when environmental documentation is prepared for other Treaty Parties; and

### Commentor:

IAATO-3	EPA notes that IAATO supports Alternative 2, EPA's preferred alternative, but with modifications from Alternative 5. With regard to IAATO's opinion on whether the proposed rule should establish a threshold definition (or other provision) for the term "more than a minor or transitory impact," EPA maintains that the Protocol does not define "minor or transitory." Until the Treaty Parties provide guidance or definition, EPA believes it is reasonable to provide such guidance to operators and that it is prudent to define the term "more than a minor or transitory impact" consistent with the threshold definition applied to the environmental impact assessment of governmental activities in Antarctica as delineated in 16 U.S.C. §2401 <i>et seq.</i> If a definition is provided under the Protocol or other appropriate means under the Treaty, EPA would amend its final rule, as appropriate, to ensure it is consistent with Annex I as required by the Act.
IAATO-4	EPA acknowledges that IAATO recognizes that certain modifications from Alternative 5 were not included in Alternative 2, EPA's preferred alternative.

(IAATO-2)

IAATO-3

IAATO-4

FROM :

Dec. 03 2000 10:52am P3

PRX NO. :

Provide a "categorical exclusion" from the need to prepare environmental documentation for ship-based tourism on the "Lindblad model."

For the reasons stated in our comments of August 25, 1997, June 22, 1998, and July 30, 1998, which we incorporate herein by reference, we continue to believe that, with some modification based upon IAATO's experience under the interim final rule, adoption of each of these provisions would be appropriate. Leaving aside the issue of enforcement, we would emphasize the following points:

First, our position remains that EPA lacks authority under the Act, just as it lacks authority under NEPA, to require revision of environmental documentation submitted to the agency. EPA is given authority under Section 4A(c) of the Act solely to "promulgate regulations to provide for - (A) the environmental assessment of nongovernmental activities . . . ." Nowhere does the Act give EPA authority to pass upon the adequacy of environmental assessments that have been prepared. Moreover, even assuming arguendo that EPA, for example, could review an Initial Environmental Examination ("IEE") for adequacy and provide comments to tour organizers, IAATO does not believe that EPA can compel revision and resubmission of such a document. In this regard, IAATO submits that at most EPA's authority under the Act is similar to the authority which it has under Section 309 of the Clean Air Act, 42 U.S.C. § 7609, to review and comment upon, but not require revision of, environmental impact statements prepared pursuant NEPA.

Second, we believe it would be highly desirable to provide for automatic reciprocity when environmental documentation prepared for other parties is submitted by a U.S.-based operator. For example, if an U.S. company chartered a ship from a foreign operator (for example, a German company), the German company would file Advance Notification, an IEE and all other required documentation with the German Government. This is sufficient to satisfy all requirements under the Protocol. To duplicate paperwork and IEE submissions seems pointless.

Third, we continue to see relatively little utility for PERMs, which do not differ substantially from the information provided in accordance with paragraph 5 of Article VII of the Treaty and as elaborated in Recommendation XVIII-1 of the Antarctic Treaty System. To date, we believe that no PERMs have been submitted for ship-based tourism of the sort that is carried out by IAATO members and that has been covered by IEEs. However, we recognize that there may be some, limited instances in which a PERM is warranted. We suggest that EPA may wish to make it clear that the PERM category is basically appropriate for "one-off", adventure activities, e.g., small scale aircraft-supported expeditions, where the level of documentation required in an IEE would not be necessary but some limited assessment of environmental impacts may be worth undertaking.

Fourth, we are still convinced that there are good grounds for allowing a "categorical exclusion" from documentation requirements for ship-based tourism on the "Lindblad model." Based upon our experience, the model of ship-based tourism, accompanied by a thorough educational program and a qualified staff, and followed to date by Antarctic tour operators, has minimal impact on the Antarctic environment. Thus, EPA should actively consider developing a categorical exclusion for many, if not all, such activities.

**(2) EPA Should Reject Alternatives Nos. 3 and 4.**

As we have noted in our past comments, the obligations created under the Protocol for environmental assessment are procedural in character, modeled on the requirements of NEPA which the U.S. Supreme Court has definitely stated do not impose substantive obligations on Federal agencies.

## RESPONSE TO COMMENTS

### Commentor:

IAATO-5	EPA acknowledges that IAATO has incorporated three comment letters previously sent to EPA dated August 22, 1997 (note corrected date); June 22, 1998; and July 30, 1998, into its comment letter on the Draft EIS dated April 2, 2001. EPA further notes and acknowledges that IAATO sets aside the issue of enforcement.
IAATO-6	In order for the U.S. government to implement certain of its obligations under the Protocol, the Act requires EPA's to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Treaty. Thus, the procedures in the proposed rule would ensure that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. In keeping with the U.S. government's obligations under the Protocol and EPA's obligations under the Act, under the proposed rule (as with the Interim Final Rule), EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of the regulations. EPA believes that before such a finding is made, it is prudent to offer comments to the operator so that the operator may, at its discretion, make necessary revisions to the document. If the operator proceeded after EPA made a finding that the documentation does not meet the requirements of Article 8 and Annex I and the requirements of the proposed rule, the operator would be in violation of the regulations and would be subject to enforcement.
IAATO-7	It is the responsibility of the U.S. government to comply with its obligations under the Protocol. The U.S. government would need to determine whether, in an appropriate case, it could rely on the regulatory procedures of another Party. However, EPA does not believe that a discretionary process should be a regulatory provision in the proposed rule.

## RESPONSE TO COMMENTS

<b>Commentor:</b>	
IAATO-8	EPA acknowledges that IAATO recognizes there may be some instances in which a PERM is warranted and EPA agrees with this. However, EPA does not necessarily agree that a PERM is appropriate for "...one-off", adventure activities, e.g., small scale aircraft-supported expeditions..." without first reviewing the specific details in an environmental impact assessment for a proposed expedition such as this. Further, EPA believes that the preliminary environmental review process is significantly different from submitting basic information (as delineated in Section 8.4(a) of the Interim Final Rule, information similar to that submitted by operators for advance notification purposes) in that simply submitting this information does not constitute the preliminary environmental assessment process as delineated in Section 8.6 of the Interim Final Rule for PERMs.
IAATO-9	The National Environmental Policy Act (NEPA) defines 'categorical exclusion' as "a category of actions which do not individually or cumulatively have a significant effect on the human environment...and for which, therefore, neither an environmental assessment nor an environmental impact statement is required" (40 CFR §1508.4). Only narrow and specific classes of activities can be categorically excluded from environmental review. For example, EPA in its NEPA regulations at 40a CFR part 6.107(d) excludes "...actions which are solely directed toward minor rehabilitation of existing facilities..." and the National Science Foundation in its environmental assessment regulations at 45 CFR Part 641(c)(1) and (2) excludes certain scientific activities (e.g., use of weather/research balloons that are to be retrieved) and interior remodeling and renovation of existing facilities. The Draft EIS noted that IAATO's recommendation that Antarctic ship-based tourism organized under the "Lindblad Model" be categorically excluded. However, EPA does not have a specific definition for the "Lindblad Model." EPA also believes that a broad categorical exclusion covering ship-based tourism as now conducted does not fit well with the approach used by the U.S. government for categorical exclusions because it does not identify actions to be excluded in sufficient detail. Further, more needs to be known about potential cumulative impacts of nongovernmental activities undertaken by U.S.-based ship-based tour operators before deciding to exclude some or all of these specific activities. However, in the Preamble to the proposed rule, EPA has asked for comments on specific activities that the Agency should consider including as categorical exclusions in the final rule including the justification for this proposed designation. It should also be noted that even if EPA does not designate categorical exclusions in the final rule, these can be designated by amendment to the rule if categorical exclusion activities are identified in the future.



## RESPONSE TO COMMENTS

Ms. Katherine Biggs  
April 2, 2001  
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*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-351 (1989). As the Supreme Court has stated, "NEPA merely prohibits uninformed — rather than unwise — agency action." *Id.* We think that, in elaborating rules under the Protocol and the Act, it is imperative that EPA be mindful that it is dealing with a similar regime and that it cannot require nongovernmental operators to choose an alternative that is the least environmentally harmful or otherwise to meet substantive environmental protection obligations.

Given its view of the Protocol and the Act, IAATO strongly agrees with EPA's proposed rejection of regulatory alternatives nos. 3 and 4. Both these alternatives, in our opinion, go well beyond what is authorized under the law. Regulatory alternative no. 4, in particular, would impose precisely the kind of substantive obligations, which we believe neither the Antarctic Treaty Parties nor the Congress intended. Indeed, because these alternatives are not authorized by, and are inconsistent with, the Protocol and the Act, it is questionable whether EPA should even have included them in the DEIS as "reasonable alternatives" within the meaning of Section 102(2)(C) of NEPA and 40 C.F.R. § 1502.14. In any event, they are unwarranted.

### A. Alternative No. 3.

Regulatory alternative no. 3 would:

Broaden the definition of "operator" to include foreign operators doing business in the United States, or, alternatively, it would apply the rule to all U.S. citizens; and

Require that assessment documentation demonstrate compliance with the Protocol and U.S. environmental statutes.

We agree entirely with EPA that it would not be legally permissible to make foreign operators doing business in the United States subject to the final rule or to apply the final rule to all U.S. citizens going to Antarctica. Indeed, to proceed in this fashion would not only be inconsistent with the U.S. position at Antarctic Treaty Party meetings, but it would also be inconsistent with the provisions of the Protocol and without legal authority under the Act. Section 4A(c)(1)(A) of the Act calls for EPA to promulgate regulations "to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty." A focus on "operators," defined as a person subject to U.S. jurisdiction who "organizes" a nongovernmental expedition to Antarctica, is consistent with the interpretation of Advance Notification by the U.S. Department of State.

Moreover, in our judgment, there is no question that the environmental assessment requirements of the Act do not extend to the actions of individual U.S. citizens who simply participate in expeditions. We strongly believe that EPA has not been given oversight of international tourism to the Antarctic but rather the mandate to promulgate regulations for U.S. organizers only. In any event, with 4000-plus U.S. tourists going to Antarctica each year, it would be an impossible task for EPA and the tour operators to implement a requirement applicable to individual tourists.

At the same time, as is apparent from our discussion of NEPA at the outset of this section, IAATO concurs that assessment documentation need not demonstrate compliance with the Protocol and U.S. environmental statutes. In our view, EPA has not been given the mandate to promulgate a rule with substantive consequences, e.g., a rule, which could effectively require that certain environmental impacts

### Commentor:

IAATO-10

EPA notes that IAATO agrees with EPA's analysis of Alternatives 3 and 4. EPA disagrees, however, with the characterization of Alternatives 3 and 4 as not being "reasonable alternatives." In determining the scope of alternatives to be considered, reasonable alternatives may include those that are outside the jurisdiction of the agency or beyond what Congress has authorized. A potential conflict with federal law does not necessarily render an alternative unreasonable, although such conflicts must be considered. (46 *Federal Register* 18026, March 23, 1981, as amended.)

IAATO-11

EPA acknowledges the opinions provided by IAATO as to why Alternative 3 should be rejected.

(IAATO-10)

IAATO-11

Dec. 03 2000 10:53AM PS

FROM: FAX NO.

FROM:

## RESPONSE TO COMMENTS

Ms. Katherine Biggs  
April 2, 2001  
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be avoided. Indeed, such an approach would be wholly inconsistent with the experience of the NEPA process, the intent of the Protocol and, therefore, the mandate of the Act. Yet to focus assessment documentation on precisely this issue is necessarily to imply a substantive obligation.

### B. Alternative No. 4.

Regulatory alternative no. 4, which EPA characterizes as the "substantive rule", would impose even further requirements on operators. It would:

- Require that compliance with Article 3 of the Protocol be demonstrated;
- Allow the Federal Government to prevent any activity whose impacts are determined to be unacceptable;
- Provide for public comment on IEEs; and
- Require a Comprehensive Environmental Evaluation ("CEE") any time a new landing site is selected.

IAATO believes EPA is quite correct in proposing to reject such proposals.

It should go without saying from our discussion above of the procedural, as opposed to substantive, obligations of the Protocol and the Act, that requiring "compliance" with Article 3, or allowing the Federal Government to prevent "unacceptable" activities, is simply not permissible under the law. IAATO takes the position, along with the U.S. Department of State and other agencies, that Article 3 Principles are principles which inform the entire Protocol but which were not intended to create binding legal obligations and should not be treated as such. At the same time, as EPA points out, Article 8 "provides for an EIA process but does not impose substantive requirements" (DEIS at page vii, note 16). It seems to us that EPA's conclusions set forth at page vii, note 16, and at pages 4-15—4-17 of the DEIS are correct. *Id.*

The two "procedural" elements of regulatory alternative no. 4 are equally objectionable. IAATO supports the approach taken in the interim final rule with respect to the public availability of IEEs. The Protocol does not mandate public comment on IEEs, and provision has already been made in the interim final rule for informal public access to any IEEs received. This is sufficient and consistent with NEPA practice. As for requiring a CEE when any new landing sites are selected, this proposal, as EPA correctly notes, is without scientific basis (DEIS at page vii, note 19). In addition, imposing such a requirement would be burdensome in the extreme and a prescription for substantial delay and added expense in expedition planning. Because of the time associated with scouting new landing sites, the current uncertainty about the ATCM and Committee for Environmental Protection (the "CEP") meeting schedules and the requirements of Annex I, Article 3, to the Protocol for circulation to and consideration of draft CEEs by the Treaty Parties and the CEP, requiring a CEE could literally result in planning delays of several years.

### (3) IAATO's Experience over the Last Four Years Counsels the Wisdom of a Limited, Procedural Rule.

Over the last four years, we have been able to test the workings of the interim final rule. In general, it has worked well, and IAATO's experience counsels against any substantial change.

### Commentor:

IAATO-12	EPA acknowledges the opinions provided by IAATO as to why Alternative 4 should be rejected.
IAATO-13	EPA agrees that, in general, the procedures under the Interim Final Rule have worked well.

(IAATO-11)

IAATO-12

IAATO-13

## RESPONSE TO COMMENTS

Mr. Joseph Montgomery  
Mrs. Katherine Biggs  
April 2, 2001  
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The U.S. IAATO member tour operators have all appreciated the ability to file a joint Programmatic IEE, as we believe this is the most efficient and sensible way to work. We also believe it is one of the more effective ways of being able to begin looking at cumulative impact from both the U.S. tour operators and from the industry as a whole. We would like to be able to continue to provide programmatic IEEs, with yearly updates to reflect any significant changes as we have done those last few years.

IAATO-14

Filing the IEE 90 days before departure has worked fairly well. However, several companies have had to request changes up to or during the time of sailing. We would like to thank EPA for allowing those changes. Most of them have been in areas that have little or no impact. For example, Lindblad Expeditions has added the use of kayaks, underwater diving equipment and staff divers, etc. Quark Expeditions has submitted its IEE pending the finalization of the helicopter operations and exact use of helicopters. In some cases, all operational details aren't fully in place 90 days before sailing, and all operators appreciate the flexibility in being able to submit final plans within the 90-day time limit. The U.S. tour operators will endeavor to keep EPA and the U.S. Department of State (via the Advance Notification) up-to-date concerning any changes up to and/or during the season and through follow-up at the end of the season.

IAATO-15

IAATO would also note that EPA has sensibly not required re-filing of IEEs and other documentation when a company included in an IEE, e.g., Expeditions Inc. and Society Expeditions in 1999 and 2000, respectively, subsequently has decided not to operate vessels in a given year. We hope that EPA will continue to respond with this kind of flexibility when companies' plans change.

IAATO-16

On some submissions EPA has requested clarification and queried some inconsistencies. IAATO is happy to make these corrections. However, in several cases clarification has mainly related to drafting errors. We hope that, as EPA becomes more familiar with our operations, it will be able to recognize drafting, as opposed to substantive, issues, and so reduce the amount of time associated with minor corrections to environmental documentation.

IAATO-17

Finally, on the issue of "cumulative impact," IAATO has been troubled by continuing requests to provide actual data on cumulative impacts when in fact there is no real international agreement on how to do so. IAATO members are seeking ways to assess cumulative impacts, but to provide actual data in the short term is not feasible. For the last five years or so, IAATO members have been supporting Oceanites' work by offering Ron Naveen and his employees space on board tourist ships to collect data. For over 10 years or so Tour Operators have also been transporting close to 100 scientists per year to Antarctica in addition to Oceanites. We also in part supported the June 2000 cumulative impact workshop in San Diego. We believe that Oceanites' baseline information is an excellent start for finding out what is actually occurring at visited sites and some of the changes that have taken place over the years. We would also encourage future support from EPA and/or the National Science Foundation ("NSF") to Oceanites should Ron's group or other research groups decide to continue efforts on understanding the Antarctic ecosystem and the long-term and cumulative impacts of tourism, if any. IAATO members are committed to measuring cumulative impact and will work closely with the scientific community to do so.

IAATO-18

### (4) IAATO Has Several General Comments on the DEIS and EPA's Regulatory Responsibilities.

IAATO continues to adhere to the positions set out in our comments of August 25, 1997, June 22, 1998, and July 30, 1998. Many of these comments are reflected in the discussion of regulatory

IAATO-19

### Commentor:

IAATO-14

Like the Interim Final Rule, the proposed rule would not have a specific provision for a "programmatic" environmental document. However, the paperwork reduction provisions from the Interim Final Rule would be carried forward into the proposed rule (see IAATO-20). Under these provisions, a "programmatic" IEE could be prepared in that more than one proposed expedition by an operator may be included within one environmental document and may, if appropriate, include a single discussion of components of the environmental analysis that are applicable to some or all of the proposed expeditions, and one environmental document may also be used to address expeditions being carried out by more than one operator, provided that the environmental documentation includes the names of each operator for which the environmental documentation is being submitted pursuant to obligations under the proposed regulations.

IAATO-15

EPA notes that IAATO agrees with the schedule in the Interim Final Rule for submitting IEEs and that flexibility may be needed to accommodate last minute modifications.

IAATO-16

EPA acknowledges that IAATO recommends flexibility regarding EIA documentation to address last minute modifications such as canceled expeditions. EPA appreciates the information IAATO has provided when such circumstances have occurred.

IAATO-17

Under the proposed rule, EPA would continue to comment on documents as discussed in IAATO-6 and may continue to note drafting errors along with these comments.

IAATO-18

EPA appreciates the information provided in the comment. However, consistent with Article 8 and Annex I and like the procedures in the Interim Final Rule, the procedures in the proposed rule would require that unless an operator determines and documents that a proposed activity would have less than a minor or transitory impact on the Antarctic environment, the operator would need to prepare an IEE or CEE. In making the determination what level of environmental document is appropriate, the operator would need to consider, amongst other things, whether and to what degree the proposed activity together with other activities, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects. To date, U.S.-based operators have concluded that the potential impacts, including cumulative impacts, are no more than minor or transitory for their planned expeditions and EPA believes that their conclusions have been supported by the information currently available. However, as stated in the Draft EIS

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alternatives in sections 1 and 2 above. To the extent they are not included in such comments, we would make three important points for the record:

(1) We continue to support full compliance with the Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act of 1996 to ensure that the costs of regulation do not outweigh its benefits and to reduce burdens imposed on the regulated industry. We believe that EPA during the last four years has been supportive, and we would like to maintain the same working style.

(2) As noted above, EPA has not been given general oversight responsibilities for international tourism to the Antarctic, and, therefore, the environmental assessment requirements of the Act do not extend to the actions of individual U.S. citizens who simply participate in expeditions. However, there may be some gray areas of the rule that require clarification. We understand that there are U.S. citizens carrying out "private expeditions" on yachts who have not submitted the proper documentation to national authorities. We also understand that there have been U.S. citizens who planned to fly their private aircraft from Argentina to Marambio. Plainly an effort should be made to ensure that there is environmental impact assessment and Advance Notification submitted for such activities.

(3) We still believe, as expressed in our August 25, 1997, letter, that Annex I of the Protocol does not mandate mitigation, just as the NEPA process does not require mitigation. Similarly, it is still not possible to create any scientifically credible monitoring regime at this time. EPA's preferred alternative thus wisely steers away from imposing mitigation and/or monitoring requirements.

**(5) EPA Should Make a Number of Specific Revisions and Corrections to the DEIS.**

In the final document, IAATO would like to see a variety of drafting and some substantive changes made. In general, references should be updated to include the information, especially that relating to activities during the 1999-2000 austral summer season, set out in IAATO's reports submitted to the Special Antarctic Treaty Consultative Meeting ("SATCM") held in the Netherlands in September, 2000 (SATCM /Information Papers 32, 33). Specific suggestions, on a page-by-page basis, are as follows:

Page 2-7: Should say Ford "Ranges" on Figure 2.7. Source (Walton 1984) is not included in references.

Page 2-8, Figure 2.8: Source (Foster 1984) is not included in references.

Page 2-9, para. 3: Change spelling of "algae" to "alga"; "Palmisano" should have an "o" on the end.

Page 2-10, para. 3: Should read: "The Ellsworth Mountains in West Antarctica are the tallest, with Vinson Massif at 4897 m (16,067 feet above sea level). . . ."

Page 2-10, para. 3: SCAR Bulletin 1999 is not in references.

Page 2-11, para. 1: Source (Adventure Network International) is not in references.

Page 2-11, para 3: "Larsen" Ice Shelf; Larsen is spelled with an "e".

Page 2-12 , para. 3: Sentence should read "... from the Pole, and blue-green algae were observed in a frozen pond . . . ."

## RESPONSE TO COMMENTS

### Commentor:

	(p. 5-8), the issue of cumulative impacts, particularly in the Peninsula area, remains a concern in light of several factors. EPA acknowledges that there is no international agreement on the process for determining cumulative impacts. For these reasons, EPA believes it prudent to move forward in partnership with interested parties, including IAATO and other interested government, nongovernmental research, industry and environmental interest group representatives to consider the research needed to assess whether any changes in the Antarctic fauna and flora are related to natural variation or to tourism activities.
IAATO-19	EPA acknowledges that IAATO continues to adhere to the positions set out in previous comment letters. EPA further notes that IAATO acknowledges that "[m]any of these comments are reflected in the discussion of regulatory alternatives in Sections 1 and 2 above." Also see IAATO-5.
IAATO-20	As required by law, EPA will comply with the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Executive Order 12866, and other statutes and Executive Orders, as appropriate, in proposing and promulgating the rule to amend 40 CFR Part 8.
IAATO-21	The EIA provisions of EPA's proposed rule would apply to all operators for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty. Information about possible U.S.-based expeditions becomes available to the U.S. government through various sources. Upon receipt of such information, the Department of State considers whether advance notice is required, the National Science Foundation considers whether issues under the Antarctic Conservation Act need to be acted upon (e.g., need for permits), and EPA would inform the potential operator of the EIA regulatory requirements. EPA realizes the difficulty of getting information about its regulation to all those who may be subject to it. The U.S. government appreciates any information that may be provided by IAATO and its member operators in this regard.
IAATO-22	EPA notes that IAATO agrees with the mitigation and monitoring provisions in the Interim Final Rule.
IAATO-23	Suggested edits and revisions will be incorporated into the Final EIS as appropriate.

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Page 2-13: In Table 2.1 under localities, it should say South "Orkney", not "Ornkey".

Page 2-14, para. 3: Llano 1965 is not in references.

Page 2-15, Figure 2.12: Should read ice "cored", not ice cord.

Page 2-15: Source (van der Maarel 1993) is not in references; note 15 should read "Exiflora", not "exliflora".

Page 2-16, para. 2: Change spelling to "Prymnesiophytes" (add a "t").

Page 2-17, para. 3: Second sentence should read "... of the species and accounts" (add "s" to "accounts"), and note 17 should say "... fish families that have secondarily adapted" (not "adopted")

Page 2-18, para. 2: Should read "polychaetes" (change spelling); in Table 3.3, change spelling to read "Pycnogonida".

Page 2-18, para. 4: Should read "None of the terrestrial invertebrates is designated as native ... and none is designated as a Specially Protected Species."

Page 2-19: The Ross Seal scientific name, "rossii", has two i's.

Page 2-20, para. 1: The laws cited are not in references; "rossii" has two i's; the total in Table 2.4 should be 18,270,000-33,700,000.

Page 2-20, para. 4: Some of the bird species listed live north of 60 S and so Table 2.5 should have a different name.

Page 2-21: Should read "Native Birds of Antarctica and the Sub-Antarctic ...". King Penguin are not native to the Antarctic but rather to the Sub-Antarctic; change name to "Gray-headed" (not "head"); "Fulmar" is spelled with an "a".

Page 2-22: Cape Pigeon is also called Cape Petrel or Painted Petrel; South Georgia Pipit is not listed. *Quere* whether (and where) a Barn Swallow been seen?

Page 2-24, Table 2.6: Abundance Estimates and Status are not for Peninsula only but include the Sub-Antarctic; Figure 2.14 should actually read, "Timing of Breeding Seasons in Antarctic Penguins in Comparison with Antarctic Tourist Activity".

Page 2-26, Table 2.7: Should read "Antarctic", not "Arctic".

Page 2-27, para. 2: Should read "Whalers Bay".

Page 2-28, para. 2: Change Eastern to Western in first sentence.

Page 2-29: Change note to read "coarse" rather than "course"

Page 3-11, Table 3.3: There need to be several changes: (a) in 1991-92, First Russian tourist ship with ice-hardened hull enters Antarctic tourism market; (b) in 1992-93, First Russian icebreaker enters

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Antarctic tourism market; and (c) in 1996-97, Russian icebreaker, *Kapitan Khlebnikov*, makes first circumnavigation of Antarctica; also, in para. 3, Stonehouse should be "1995", not "1994".  
Page 3-13, para. 1: Should be updated to reflect the 1999-2000 season rather than the 1997 season (see SATCM /IP 33).

Page 3-13, para. 3: All the information is in SATCM /IP 32, 33. The last sentence is incorrect, as flights don't occur in the winter; Swinthinbank 1988 does not include 1989-90 season reference.

Page 3-14: Here and elsewhere (including Appendix 7) the DEIS refers to IAATO's "1991 Bylaws." Such references should be replaced with references to IAATO's current Bylaws. Our Bylaws have changed since 1991 and have been posted on our website for at least the last three years. We would note that IAATO's Bylaw changes should not affect the conclusions in the DEIS. If anything, our current Bylaws are more environmentally protective than the original 1991 Bylaws. We will continue to update EPA with regard to any future Bylaw changes.

Page 3-15: Currently the *Vista Mar* is also sailing and has a 280 passenger capacity (see SATCM /IP 33).

Page 3-16: Guidance for Visitors and Tour Operators was created by IAATO and in 1994 was slightly modified and adopted as Recommendation XVIII-1.

Pages 3-16, note 29, 3-18 and 3-20, para. 2, and note 40: These all deal with minimum staff/passenger ratios. The staff-to-passenger ratio is listed differently in different sections of Chapter 3, and this inconsistency should be corrected. Page 3-16, note 29, states that the "tourist/guide ratio is a self-imposed limitation for IAATO members. See Section 3.8." This is correct. In the middle paragraph of page 3-18 (starting with "The JEFs..."), there is a sentence, which states IAATO members "maintain a minimum 1:20 ratio of staff to passengers." Page 3-20, para. 2, states "1:15-20", yet the accompanying footnote (No. 40) states "1:20," which agrees with page 3-18. In addition, this is not an IAATO Bylaw issue as the DEIS states. Rather, the staff-to-passenger ratio is an IAATO standard. (This was correctly noted on page 3-18, but not on 3-20.) The ratio should be consistently set forth throughout as "at least 1:20" or a "minimum of 1:20", and EPA should clarify that this is an operating standard.

Page 3-19, para. 2: The written version of Guidance for Antarctic Visitors and Tour Operators has been translated into English, Russian, German, Spanish, French, Chinese, Japanese and Italian. Briefings are held in Russian and German, whenever possible.

Page 3-20: The minimum staff/passenger ratio is 1:20, though some ships do better than that.

Page 3-21: Sections 3.9 and 3.91 need to be consistent. Orient Lines began operating in 1993-94 season.

Page 3-24, para. 1: Wording is redundant after Terra Nova Bay; delete "In the Ross Sea area".

Page 3-25, note 48: Change spelling to read "Colombia".

Page 3-27, Table 3.8: Change spelling to read "Neumayer".

Page 3-28, para 3: Should read "from the southern tip of Chile and is accessible only by air and over land."

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Page 3-29, para. 4: In the name, Sor Rondane, Sor needs a line through the "o".

Page 3-30, Table 3.9: Maps and Photo documentation should probably not be in italics.

Page 3-33: There is no Table listed as 3.10. In Table 3.11, 1994-95 should read total 8,210 tourists instead of 8,120, and in 1997-98, the total should be 9,644.

Pages 3-34-3-41, Section 3.13.2: The charts that list the most visited sites never explain why certain sites were highly visited. For example, Port Lockroy has been more frequently visited because it is a great shopping spot now that the base has been restored and reopened with a post office, museum, shop, etc. Half Moon Island was frequently visited when Bernard Stonehouse had his research team there. Similarly, tour operators visited Cuverville Island at the request of the researchers who were doing human/wildlife studies. Projects such as these raise the numbers at certain sites, and this factor should be acknowledged in the DEIS.

Page 38: As noted above, it would be worth explaining that the reason why Port Lockroy became the most heavily visited site was because of the establishment and renovation of the old base.

Page 3-39: The DEIS states that Palmer Station is one of the five sites now getting more than 10,000 visitors a year. However, there is no explanation why the numbers have increased. It is due to the fact that NSF has increased the number of visits it will allow.

Page 3-42, para. 1: The ANAN newsletter report was incorrect. In addition, the Lyubov Orlova never went to the Ross Sea, as this voyage was canceled.

Page 3-43, paras. 2-4: Again, ANAN is referenced, but this is not a reliable reference; it would be more accurate to refer to IAATO's 2000 annual report (SATCM/IP 32). In addition, 1,300 passengers is an incorrect number. The total number of passengers was 1801 for a total of four voyages on two vessels, the Aegean 1 and the Ocean Explorer (SATCM/IP 33). In note 77, "Poncet" should read "Poncet".

Page 3-44: Reference to the ANAN newsletter is again incorrect. Croydon travel carried 3412 passengers on 9 flights from November 1999-February 2000. Croydon has operated a total of 52 flights carrying nearly 17,000 tourists since the 1994-1995 season (SATCM/IP 33). See page 4 of SATCM/IP 33 for further flight information.

Page 3-45, note 84: This isn't correct, as more now landings took place in the early to mid 90's but not as many since and also not all in the Peninsula.

Page 3-46, note 89: "effect" should be changed to read "affect".

Page 3-47, note 95: Note that Special Expeditions has changed its name to Lindblad Expeditions (2000).

Page 3-48, para. 1: Again ANAN is referenced and the information needs to be changed. See SATCM/IP 32, Appendix A. In note 102, EPA should be aware that Marine Expeditions has never operated in the Ross Sea and the Lyubov Orlova has never been there.

Page 3-50, paras. 3-5: Karlsen Shipping, in conjunction with the Norwegian-based company, Polar Star Expeditions, plans to initiate Peninsula area tourism with the Polar Star with 90 passengers maximum and 40 staff/crew beginning with the 2001-02 season. They plan to operate 9 voyages. (Again the

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ANAN information is incorrect.) SASCO did not operate in the 2000-01 season and is no longer in business as far as IAATO is aware. Also, in the paragraph that begins "McIntyre Marine", that information is incorrect (from the ANAN newsletter). Ocean Frontiers operated two voyages on board the Sir Hubert Wilkins, a 20 (not 32) passenger vessel.

Page 3-51, note 110: Should state approximately 16 yachts carrying an average of 9 passengers on 22 voyages (SATCM/IP 33).

Page 3-52, para. 2: We would suggest checking these facts with ANI in light of the number of changes required in other sections due to reliance on the ANAN newsletters. In note 112, "Cuverville" should be "Cuverville", and "Weinke" should be "Weincke".

Page 3-53, para. 3: The hut at Commonwealth Bay may have been removed this season. Also, we believe the two-woman team had to be evacuated as well. EPA should verify this with ANI.

Page 3-54: Croydon Travel is spelled wrong.

Page 3-55, para. 3: Should read "though none is anticipated", not "are".

Page 3-56, para. 3: "Yacht" should be singular, and should read and "Though none is", not "are".

Page 4-5, note 10: The IAATO slide show is also used to brief passengers on IAATO vessels.

Page 4-12: The Antarctic Treaty Parties have yet to agree on a definition of "more than minor or transitory."

Page 4-16: IAATO also agrees with EPA's conclusions that substantive provisions and insurance bonding requirements would go well beyond the Protocol.

Page 4-17: (Scully 1993) in second paragraph is not in the references.

Page 4-20: The DEIS states, "It has been EPA's experience over the past four years in carrying out reviews in consultation with other interested federal agencies, that the initial draft of the environmental documentation provided by the U.S.-based operators did not always support a conclusion consistent with the level of impact for the proposed activities described." IAATO questions this statement. For the most part, queries have had nothing to do with the level of impacts but rather have related to points of clarification or drafting issues. To the extent this comment relates to the issue of cumulative impacts, we believe the IAATO U.S. tour operators assessments stand, and the ability to measure and determine cumulative impact is evolving. The tour operators have been using and will always endeavor to use the most accurate methodology available to make observations of human-related impacts. Finally, it is our understanding that no PERMS have been filed by U.S. operators.

Page 5-5, para. 1: In actual fact, both governmental and nongovernmental expeditions by their nature involve the transport of persons to Antarctica, which *could* result in physical impacts. The word "will" is too strong, as none of this has actually been proven, and the same holds true for science and non-science programs. Furthermore, even if there may be impacts, this does not mean that such impacts are significant. Indeed, to date, the impacts have not been demonstrated to be significant.

Page 5-11, para. 2: Cohen 1999 is not in references, and, in footnote 21, "Papua" is spelled wrong.

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Page 5-12, para. 3: Should read initiatives that have "led", not "lead" to the conclusions.

Page 5-23, para. 4, and page 5-24, para. 5: Should read "criterion", not "criteria".

Page 5-25, para. 1, and page 5-29, para. 1: Should read "include", not "included".

Page 5-31, note 61: Should read "interference" not "interfere".

Page 5-33, para. 6: Should read "ensure", not "assure".

Page 5-35, para. 3: Should read "modifications".

Page 5-39, para. 4: Should read that alternative 5 would "include", not "included".

Pages 9-1 — 9-15 (References): A number of references need to be added, including, but not limited to, Cohen 1999, Foster 1984, Lanos 1984, Llamo 1965, Scully 1993, Walton 1984, etc.

*Distribution List:*

Please note that Deborah Natansohn is no longer at Orient Lines; she should be replaced by Erland Fogelberg.

*Appendix 3:*

Pages 3-2, 3-3, 3-5 and 3-7: Totals should be for 1989-1997.

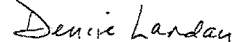
*Appendix 14:*

Page 14-1: As noted above, the Lynhov Orlova did not cruise in the Ross Sea during the 1999-2000 austral summer season. Rather, its planned voyage was canceled that season.

\* \* \* \*

Thank you for your consideration of these comments. We look forward to a continuing, productive and cordial working relationship in the future. Please don't hesitate to contact me if you have any questions or wish further information.

Sincerely,



Denise Landau  
Executive Secretary

Attachment (IAATO Membership List)

cc: U.S. IAATO Members  
Orient Lines  
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PL3 Dec. 03 2000 10:58AM

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Darrel Schoeling  
Executive Secretary

August 22, 1997

Richard E. Sanderson  
Director  
Office of Federal Activities  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, DC 20460

Antarctic Conservation Act DEIS/Scoping Comments

Dear Mr. Sanderson:

I am writing to provide these preliminary comments on behalf of the International Association of Antarctica Tour Operators (IAATO) in response to the "Notice of Intent to Prepare an Environmental Impact Statement for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica", as published in the May 9, 1997 *Federal Register* (62 Fed. Reg. 25611) (NOI). The Environmental Protection Agency (EPA) is soliciting such comments according to the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR Part 6, Subpart D; 40 CFR Part 1501). Also please find enclosed an annotated copy of the "Environmental Assessment of Proposed Interim Rules for Non-Governmental Activity in Antarctica" (EA), prepared by Science Applications International Corporation (SAIC), where John Spletstoesser has provided comments.

IAATO-24

**Timing of Rule**

As previously outlined in the letter by Eldon V.C. Greenberg on June 27, 1997, IAATO is deeply troubled by the procedures utilized to date by EPA to carry out its responsibilities under Section 4A(c) of the Antarctic Conservation Act (the Act). We believe that the novel legal and policy issues arising out of the legal mandate of the Act, and the unusual circumstances of the promulgation of the Interim Final Rule, compel EPA to pay more attention to the timing and scope of the Rule than it has shown to date. We look forward to your full response to the questions posed by Mr. Greenberg's letter, particularly regarding EPA's interpretation of the statutory mandate of the Act and self-imposed sunset clause for the Interim Final Rule.

IAATO-25

**RESPONSE TO COMMENTS**

**Commentor:**

IAATO-24	EPA appreciates the scoping comments provided by IAATO. All the information in this letter was considered by EPA in the preparation of the Draft EIS. EPA also notes that IAATO's letter of August 22, 1997, is incorporated by reference into its comment letter on the Draft EIS dated April 2, 2001; see IAATO-5 and IAATO-19.
IAATO-25	Full public disclosure about the need for and timing of the Interim Final Rule, including its sunset provision, is available in the Preamble to the Interim Final Rule in <i>Federal Register</i> , Vol. 62, No. 83, Wednesday, April 30, 1997, Rules and Regulations. The rule to amend 40 CFR Part 8 will be proposed and promulgated in accordance with the Administrative Procedure Act.

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### Nature of the Regulated Industry

IAATO is a membership organization founded in 1991 to advocate, promote and practice safe and environmentally responsible private sector travel to the Antarctic. As such, IAATO and its members have gained experience operating under the requirements of the Antarctic Treaty System, including the Protocol on Environmental Protection to the Antarctic Treaty (the Protocol) and implementing legislation. This experience unfortunately was not reflected in the EA, which was intended to fulfill NEPA requirements in connection with promulgation of the Interim Final Rule.

IAATO looks forward to a thorough elaboration and analysis of current national and international requirements and self-imposed good practices by current Antarctic tour operators in the Environmental Impact Statement (EIS) on the Final Rule currently in preparation by SAIC. We find the "no action" alternative (2.2) and analysis of the environmental consequences of the no action alternative (4.1) in the EA to be deeply flawed and incomplete.

Section 4A(c)(1)(A) of the Act calls for EPA to promulgate regulations "to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty." Given the small number of U.S. private operators and record of self-regulation by the Antarctic tour industry, IAATO sees a broad interpretation of this mandate as misguided with potentially serious consequences to the Antarctic environment. An unnecessarily burdensome, prescriptive rule could drive experienced Antarctic tour operators off-shore or out of business and dismantle the current flexible and proven approach to limiting impacts.

IAATO supports the interpretation of "persons required to carry out an Environmental Impact Assessment" set out in Section II.D.1 of the preamble to the Interim Final Rule. This focus on "operators," defined as a person subject to U.S. jurisdiction who "organizes" a nongovernmental expedition to Antarctica, is consistent with the interpretation of Advance Notification by the U.S. Department of State. We strongly believe that EPA has not been given oversight of international tourism to the Antarctic but rather the mandate to promulgate regulations for U.S. organizers only. Moreover, in our judgment, there is no question that the environmental assessment requirements of the Act do not extend to the actions of individual U.S. citizens who simply participate in expeditions.

### Commentor:

IAATO-26	This information was considered by EPA in the preparation of the Draft EIS. EPA believes the Draft EIS presents appropriate and adequate information about IAATO and the Antarctic expeditions and activities of its members within the context of the purpose and need for the document.
IAATO-27	This information was considered by EPA in the preparation of the Draft EIS.
IAATO-28	This information was considered by EPA in the preparation of the Draft EIS.

IAATO-26

IAATO-27

IAATO-28

## RESPONSE TO COMMENTS

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EPA has already devoted considerable resources to promulgating regulations which impact a handful of small private businesses representing a fraction of Antarctic tourism. The Interim Final Rule appears at present to impact just six mostly small and experienced companies doing business in the United States, representing 28% of the 103 commercially organized Antarctic expeditions planned in 1997-1998. IAATO asks that EPA take seriously its responsibilities under the Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act of 1996 to ensure that the costs of regulation do not outweigh its benefits and to reduce burdens imposed on the regulated industry.

### Environmental Assessment: A Procedural Requirement

IAATO looks forward to providing a transparent analysis of the potential impacts of its activities, which is our understanding of the requirements of the Protocol, Act and Interim Final Rule. In our view, EPA has not been given the mandate to promulgate a rule with substantive consequences, e.g., a rule which could effectively require that certain environmental impacts be avoided. Indeed, such an approach would be wholly inconsistent with the experience of the NEPA process, the intent of the Protocol and, therefore, the mandate of the Act. Nor do we believe that EPA has authority under the Act to pass on the adequacy of environmental documentation prepared by private parties. Rather, EPA's role is limited simply to the promulgation of rules governing environmental assessment. By the same token, contrary to the approach taken in the Interim Final Rule, we submit that EPA lacks authority under the Act, just as it lacks authority under NEPA, to require revision of environmental documentation submitted to the agency.

The further elaboration by EPA in the Final Rule of specific factors to consider in reviewing potential impacts is not warranted. The Interim Final Rule already incorporates the detailed factors contained in Article 2 and Article 3 of Annex I of the Protocol. IAATO takes the position, along with the U.S. Department of State and other agencies, that Article 3 Principles are principles which inform the entire Protocol but which were not intended to create binding legal obligations and should not be treated as such. IAATO is deeply concerned that the inclusion of this item as an issue in the NOI is an effort to turn a procedural requirement into a substantive review of potential impacts.

IAATO is deeply troubled by the ongoing focus by EPA and its contractor, SAIC, on issues that appear to be inconsistent with the substantial body of experience surrounding NEPA, as well as

### Commentor:

IAATO-29	This information was considered by EPA in the preparation of the Draft EIS. EPA appreciates receipt of the 1997 information about the U.S.-based IAATO-member operators subject to the Interim Final Rule. Also see IAATO-20.
IAATO-30	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-12.
IAATO-31	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-6.
IAATO-32	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-12.
IAATO-33	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-10.

## RESPONSE TO COMMENTS

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the Protocol and Act. While the purpose of the EIS is to elaborate reasonable alternatives, IAATO is puzzled by the attention to questions of substantive review, mitigation, monitoring, certification, required education and training and other issues that clearly do not pertain directly to the environmental assessment process.

IAATO believes that the potential impacts of Antarctic tourism activities can be most effectively managed through aggressive self-regulation, self-certification and guidance provided by the Scientific Committee on Antarctic Research (SCAR), Council of Managers of National Antarctic Programs (COMNAP) and other components of the Antarctic Treaty System. IAATO does not believe the environmental assessment process is intended, in and of itself, as a broad tool for maximum environmental protection. Rather, it is a planning tool that requires disclosure of environmental impacts of activities but does not dictate substantive results.

### Streamlining Documentation

IAATO asks that serious consideration be given to the development of a provision parallel to the provisions of NEPA regulations allowing a categorical exclusion for certain kinds of carefully defined activities. The National Science Foundation has already established a categorical exclusion for a number of governmental activities. In particular, the model of ship-based tourism, accompanied by a thorough educational program and a qualified staff, followed to date by Antarctic tour operators, has been demonstrated in other environmentally sensitive parts of the world (e.g., the Galapagos Islands, Baja California), as well as in Antarctica itself, to have limited impact. Certainly, EPA should explore whether a categorical exclusion should be appropriate for many, if not all, such activities.

Given the international nature of Antarctic tourism and overlapping national jurisdiction, IAATO asks that EPA also give serious consideration to accepting the determination on environmental assessments by other appropriate national authorities. Domestic implementation of the Protocol by other countries includes provision for document reciprocity, thereby significantly streamlining paperwork and the regulatory burden on a small industry. It would serve no practical purpose for U.S. regulations to go beyond what is required by other national authorities. Indeed, such a rule could have serious environmental consequences, putting U.S. operators at a competitive disadvantage and encouraging operators to move their operations offshore.

(IAATO-33)

IAATO-34

IAATO-35

IAATO-36

### Commentor:

IAATO-34

This information was considered by EPA in the preparation of the Draft EIS. However, it is the responsibility of the U.S. government to implement its obligations under the Protocol. As provided in the Act, EPA is required to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Treaty. Thus, under the proposed rule it would be EPA's responsibility to ensure that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. Also see IAATO-6.

IAATO-35

This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-9.

IAATO-36

This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-7.

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IAATO does not see the need to automatically require that operators file an environmental assessment with EPA on an annual basis. In some cases, companies have been operating at the same level of activity aboard the same vessels with the same staff for decades and, arguably, could be considered an existing activity. IAATO sees no value in asking for a resubmission of documentation annually for these operators. A provision should be made in the Final Rule for a multi-year submission based on a projection of future activities.

IAATO-37

The Interim Final Rule includes an additional category of documentation called a Preliminary Environmental Review Memorandum (PERM), which does not differ substantially from the information provided in accordance with paragraph 5 of Article VII of the Treaty and as elaborated in Recommendation XVIII-1 of the Antarctic Treaty System. IAATO sees no need for this category and asks that it be abandoned in the Final Rule. Detailed information on planned activities is already being provided to the State Department, which has the responsibility for distributing the information.

IAATO-38

### Mitigation and Monitoring

Annex I of the Protocol does not mandate mitigation nor does the NEPA process require mitigation. The Final Rule should not require mitigation for any activity. As provided in the Interim Final Rule, operators who choose to mitigate their activities will assess and verify the adequacy of proposed voluntary measures. The Interim Final Rule needs no further modification on this subject.

The information required by the Antarctic Treaty System and as incorporated in the Interim Final Rule regarding the scope, frequency and intensity of tourism and other nongovernmental activities in the Antarctic is sufficient to allow for a retrospective analysis of potential impact. IAATO notes that the standard Post Season Report (Final Report of the XXI ATCM, Resolution 3 (1997)) requires more information than reports filed on governmental activities. The standard report will greatly facilitate future work on the potential impact of tourism activities.

IAATO-39

The Interim Final Rule needs no further modification in regard to monitoring. SCAR has not yet developed clear guidelines and recommendations on monitoring programs. It is not possible to create any scientifically credible monitoring regime at this time, and such a regime must be created with the advice of scientists familiar with the Antarctic. To mandate any further monitoring now would create an expensive additional

Commentor:	
IAATO-37	This information was considered by EPA in the preparation of the Draft EIS. Under Alternative 2, EPA's preferred alternative, the proposed rule would add a provision allowing operators to submit multi-year EIA documentation to address proposed expeditions for a period of up to five consecutive austral summer seasons. Also see IAATO-20.
IAATO-38	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-8.
IAATO-39	This information was considered by EPA in the preparation of the Draft EIS. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-22.

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burden on the tourism industry without any demonstrated scientific value to the results obtained.

-(IAATO-39)

### Public Comment on Environmental Documentation

IAATO supports the approach taken in the Interim Final Rule with respect to the public availability of Initial Environmental Evaluations (IEEs), which should be retained without modification. The Protocol does not mandate public comment on IEEs, and provision has already been made in the Interim Final Rule for informal public access to any IEEs received. This seems sufficient and consistent with NEPA practice.

IAATO-40

\* \* \*

Please do not hesitate to contact me if you have any questions about these comments or if you would like any additional information. We look forward to working closely with you as the NEPA process proceeds and participating in a second scoping session this fall.

Sincerely,

Darrel Schoeling  
Executive Secretary

Enclosure

### Commentor:

IAATO-40

This information was considered by EPA in the preparation of the Draft EIS. Under Alternative 2, EPA's preferred alternative, the proposed rule would carry forward the public availability process for IEEs that is in the Interim Final Rule.

## RESPONSE TO COMMENTS

LAW OFFICES  
**CARVEY, SCHUBERT & BARER**  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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PLEASE REPLY TO WASHINGTON, D.C. OFFICE

June 22, 1998

VIA FACSIMILE (202) 564-0070 AND MAIL

Mr. Joseph Montgomery  
Ms. Katherine Biggs  
Office of Federal Activities  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

### Implementation of Antarctic Conservation Act

Dear Mr. Montgomery and Ms. Biggs:

In accordance with the *Federal Register* notice of April 22, 1998 (63 *Fed. Reg.* 19912), I am writing on behalf of the International Association of Antarctica Tour Operators ("IAATO") and its members to comment upon the Information Collection Request (the "ICR") and accompanying Supporting Statement related to implementation of the interim final rule governing environmental impact assessment of nongovernmental activities in Antarctica.

As you know, IAATO is a membership organization founded in 1991 to advocate, promote and practice safe and environmentally responsible private sector travel to the Antarctic. IAATO currently has twenty-eight members, including twelve associate members, from ten different countries. Eight IAATO tour-organizer members are based in the United States. In the 1997-1998 austral summer, IAATO members were responsible for ninety percent of the organized land and ship-based private voyages to Antarctica, carrying about eighty percent of all travelers to the continent. IAATO thus has the strongest interest in the development of a sound, workable system for conducting environmental assessments of nongovernmental activities in Antarctica, consistent with the requirements of the Protocol on Environmental Protection (the "Protocol") and the Antarctic Conservation Act (the "Act"), and IAATO and its members are directly and immediately affected by the information collection

IAATO-41

### Commentor:

IAATO-41

EPA notes that IAATO's letter of June 22, 1998, is incorporated by reference into its comment letter on the Draft EIS dated April 2, 2001 (see responses to comment, IAATO-5 and IAATO-19). EPA notes that the June 22<sup>nd</sup> letter represents IAATO's comments to EPA on the Information Collection Request (ICR) and the Supporting Statement for the Interim Final Rule. These comments were addressed at that time by EPA in Part C of the Supporting Statement, Response to Public Comments on the Proposed ICR. A copy of the Supporting Statement for the Interim Final Rule, including Part C, is available upon request from EPA's Office of Federal Activities. These comments were also considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule.



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requirements under the interim final rule.

As set out in detail below, IAATO has comments of four sorts concerning the ICR and Supporting Statement. First, IAATO believes that in two important respects the Environmental Protection Agency ("EPA") has misstated its own authorities and IAATO members' obligations under current law. Second, IAATO believes that EPA can and should reduce unnecessary paperwork burdens in a number of significant ways. Third, with one or two exceptions, IAATO wishes to concur with most of EPA's assumptions about the nature of the information collection and submission process as currently structured under the interim final rule. Fourth, while, based upon its experience in 1997, IAATO essentially agrees with EPA's estimates of the burden (time and out-of-pocket costs) associated with preparation of Initial Environmental Evaluations ("IEEs"), it believes EPA's burden estimates should be adjusted to eliminate time and costs associated with activities which are either unnecessary or are not and should not be required under the interim final rule.

(1) Authorities and Obligations under the Protocol, the Act and the Interim Final Rule

IAATO's most fundamental concern with the ICR and Supporting Statement relates to certain statements and assumptions made by EPA concerning the submission and review of "information on measures to assess and verify environmental impacts." E.g., Statement, pp. 4, 11, 15, 23, 25. IAATO strongly believes that EPA has no authority to demand the submission or to conduct a review of such information, nor is there any legal basis for EPA to maintain records of such information in its files.

The regime established under the Protocol, the Act and the interim final rule contemplates that information collected by the operator shall be for the use of the operator. Indeed, even Section 8.9(b) of EPA's own interim final rule, consistent with the Protocol, only states that operators must "include procedures designed to provide a regular and verifiable record of the impacts of these activities," and notably does not require that these records be made available in any fashion to EPA. Any requirement that the information gathered be submitted

-(IAATO-41)

IAATO-42

### Commentor:

IAATO-42

This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. Because the proposed rule would be patterned after the Interim Final Rule and because of the mandates of the Paperwork Reduction Act, EPA believes it is appropriate to pattern the ICR and Supporting Statement for the proposed rule after the ICR and Supporting Statement for the Interim Final Rule including calculation of burden and cost for such elements as review and revision of environmental documentation and preparation and submission of assessment and verification information. EPA notes that with regard to assessment and verification information, the Protocol, and thus the Act, requires that operators have procedures designed to provide a regular and verifiable record of the impacts of their activities; such a provision would be incorporated into the proposed rule. EPA believes that this establishes a requirement that the information be available to EPA. Otherwise there would be no way to know if an operator was in compliance with this procedural requirement in the regulation. Operators are currently voluntarily providing this information to the government, thus it is available to EPA. EPA intends to review the information voluntarily submitted, and to maintain files. Because of this, the burden and cost of review of this information was included in the burden and costs for the ICR and Supporting Statement for the Interim Final Rule and will also be included in the ICR and Supporting Statement for the proposed rule.

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to and reviewed by EPA carries with it the implication that EPA may somehow use that information to dictate that operators take particular action to mitigate or remediate impacts. Such an implication is entirely unwarranted.

The obligation imposed under the Antarctic Treaty system is to document environmental impact; the system does not mandate that particular, substantive action be taken to avoid or ameliorate impacts which are documented; and such a mandate cannot be imposed upon operators by EPA in the guise of "environmental assessment". Stated succinctly, any and all decisions to minimize and/or mitigate impacts rest with the operators, and it is solely within their discretion, for example, to decide whether to suspend, cancel or modify any activity. Information which they collect to assess and verify impacts does not and should not be considered to compel any particular actions to be taken. It necessarily follows that EPA not only has no authority in law to require submission of such information, but also that it has no authority in law to determine whether operator plans are consistent with the Protocol and/or prescribe any operator action.

-(IAATO-42)

The requirement to conduct an environmental assessment is, in sum, a procedural rather than a substantive one. Consequently, IAATO submits that all references in the ICR and Supporting Statement which suggest to the contrary are inappropriate and should be stricken.

IAATO also has a somewhat related concern regarding EPA's authority under the Act with respect to environmental documentation which is prepared by operators under the interim final rule. The ICR and Supporting Statement (at pp. 9, 11, 25, 29-33) seem to contemplate that EPA will not only, for example review IEEs, but also that it will assess their adequacy and require revision and resubmission of documentation that it deems inadequate. As IAATO stated in its August 25, 1997 "scoping comments", it is our position that EPA has no such authority under the Act. Rather, its basic role is to promulgate rules governing environmental assessment. Consequently, references in the Supporting Statement to such operator activities as revision of documentation in response to EPA comments (e.g., Statement, p. 9), at least to the extent they imply that such revision is mandatory, should be eliminated.

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(2) Reducing Unnecessary Paperwork Burdens

There are several ways in which unnecessary paperwork burdens can be reduced under the interim final rule.

First, where operators have the same level of activity year-in and year-out and impacts remain constant, a single, multi-year submission should be sufficient to meet the requirements of the law. There should be no need for operators even to provide "updates" to EPA (see Statement, pp. 5-6, 7, 9, 30) in such circumstances.

Second, to the extent any updating is appropriate, submission of a separate, "update" document to EPA should be unnecessary. Rather, the Advance Notification which the operators are currently required under the Act to provide to the Department of State, and which they also now provide on a voluntary basis to NSF, can and should be able to substitute for such a document. The Advance Notification includes details on the organizer and planned activities. Indeed, it includes essentially all the information mentioned as part of an "update" and much of the information in the IEE overall. Contrary to EPA's suggestion (Statement, p. 5) that it will be obtaining information in "updates" which it will then provide to NSF and the State Department, IAATO submits that the Advance Notification itself, absent significant changes in planned activities or environmental conditions from one year to the next, should, if provided to EPA, be adequate to meet all requirements of the Act and the interim final rule.

Third, IAATO wishes to underscore the importance from the perspective of reducing paperwork burdens of EPA accepting and relying upon documentation submitted to other Treaty Parties. The Supporting Statement, in IAATO's judgment, properly recognizes that the interim final rule does "not require a specific format", that this "allows flexibility for operators who have multiple international documentation requirements," and that it would be permissible for "an operator . . . to submit environmental documentation prepared for another country as long as all the elements required by the rule are addressed" (Statement, p. 5 and note 8). This flexibility should be

IAATO-43

IAATO-44

IAATO-45

**RESPONSE TO COMMENTS**

Commentor:	
IAATO-43	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule.
IAATO-44	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. EPA notes this comment is similar to those presented in IAATO's August 22, 1997 comment letter; see IAATO-37.
IAATO-45	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule.

## RESPONSE TO COMMENTS

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retained, and, in such circumstances, the actual time and expense of complying with the interim final rule in particular, as opposed to the Protocol's environmental assessment requirements as they apply to all Treaty Parties in general, should be reduced.

(IAATO-45)

Fourth, IAATO agrees with EPA's statement that organizers only, not individuals, are subject to obligations under the Act and the interim final rule (Statement, p. 8). This statement is consistent with the notion that, because of the international nature of Antarctic tourism, EPA must be sensitive to imposing regulatory burdens which would be infeasible or which would be so onerous as to effectively deter U.S. citizens from traveling to Antarctica at all. The same sensitivity, IAATO suggests, should guide EPA in elaborating rules for operators, most of which already charter vessels, hire staff, solicit business and otherwise carry out many of their functions overseas. The interim final rule only covers about one-half of the companies engaged in Antarctic travel, which is a truly international business. If U.S. requirements were too onerous and duplicative, the end result would not be to produce better environmental assessment or more responsible stewardship of the Antarctic environment but instead just to drive U.S. companies to set up entirely offshore operations.

IAATO-46

### (3) The Nature of the Information Collection Process

On the whole, IAATO thinks most of EPA's assumptions about the information collection process under the interim final rule are correct. Thus, even though in 1997 operators needed more time to prepare IEEs than contemplated by the regulations and therefore sought extensions, IAATO believes that the timeframes for submission and review of environmental documentation are workable and should be met in the 1998-1999 and 2000-2001 austral summer seasons (Statement, p. 14). Likewise, EPA's statements concerning operator activities associated with environmental documentation (Statement, pp. 9-10) correspond with IAATO's experience.

IAATO-47

EPA's description of the model IEE (Statement, p. 18-19) is accurate up to a point, but needs to be modified in light of the concerns expressed above by IAATO. In particular,

IAATO-48

### Commentor:

IAATO-46

This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. Further, as required by the Act, the EIA provisions of EPA's proposed rule would apply to all operators for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty. Also see IAATO-21.

IAATO-47

This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule.

IAATO-48

This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. EPA acknowledges that IAATO agrees that the description of the model IEE is accurate up to a point. EPA disagrees, however, that certain of the model IEE's elements should be stricken. "Supplemental information" is information that may be provided to supplement an EIA document such as a travel brochure or an annual Advance Notification. (EPA notes that the basic information requirements in Section 8.4(a) of the Interim Final Rule provide for generally the same information that operators submit to the Department of State for Advance Notification; operators may provide a copy of or incorporate by reference the Advance Notification for Section 8.4(a) purposes.) The burden and cost estimates in the Information Collection Request (ICR) and Supporting Statement include only time for compiling and submitting such types of information and do not include any time for their preparation because EPA assumes they were prepared for other purposes and provided as reference or updated information for purposes of the EIA document. Also see IAATO-42 with regard to documentation for "assessment and verification procedures."

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 June 22, 1998  
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references to time being needed to "prepare and compile supplemental information", to documentation of "assessment and verification (A/V) procedures", and to preparation of "updates" should be stricken.

IAATO wishes to underscore that several of the elements which underlie EPA's assessment of burden are also critical to the workability of the regulations. In particular, it is important for EPA to permit one document to cover more than one expedition and/or multiple operators (Statement, pp. 3, 6). This allows needed and appropriate consolidation of assessment work and substantially alleviates IEE costs for each individual operator. IAATO has further found that allowing information to be incorporated by reference (Statement, pp. 3, 6) facilitates the preparation of IEEs.

In one respect, EPA's projection of future assessment activities needs to be modified. EPA states that it expects that there will be 9 operators and 4 IEEs in the future years (Statement, pp. 17, 19, 30). Two additional U.S. operators (Clipper Cruise Line and Special Expeditions) are planning Antarctic expeditions in the 1998-1999 austral summer season. While this should not result in another IEE being prepared, it still should be accounted for in EPA's estimates of time and costs.

(4) Estimates of Burden (Costs and Time)

IAATO believes that EPA's estimates of burden (costs and time) are essentially accurate as far as preparation of the core IEE is concerned (Statement, p. 19). It likewise expects that any future IEEs would require the amount of time in total and per operator estimated by EPA (*id.*). However, for the reasons stated above, EPA's burden estimates should be adjusted by excluding time and costs associated with preparation of "supplemental information", "updates" and "A/V procedures". EPA's total burden estimates (2020 hours and 224 hour per operator, or \$126,746 for all operators combined and \$14083 per operator) (Statement, p. 34) should be adjusted in similar fashion.

(IAATO-48)

IAATO-49

IAATO-50

IAATO-51

RESPONSE TO COMMENTS

Commentor:	
IAATO-49	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. EPA notes this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; see IAATO-20.
IAATO-50	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. EPA appreciates receiving updated information regarding the anticipated number of operators.
IAATO-51	This comment was considered by EPA in the preparation of the Draft EIS and the ICR and Supporting Statement for the proposed rule. EPA acknowledges that the burden and cost estimates for the Interim Final Rule are essentially accurate. However, EPA disagrees that certain elements should be stricken; see IAATO-48.

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Page 7

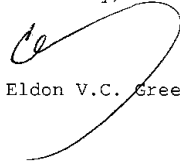
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Thank you for your consideration of these comments. Please don't hesitate to contact either Darrel Schoeling at IAATO (212-460-8715) or myself if you have any questions or wish further information.

Sincerely,

A handwritten signature in black ink, appearing to be 'Eldon V.C. Greenberg', written over a large, stylized flourish or underline.

Eldon V.C. Greenberg

cc: U.S. IAATO Members  
Darrel Schoeling



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Darrel Schoeling  
Executive Secretary

## RESPONSE TO COMMENTS

### Commentor:

IAATO-52

EPA appreciates the scoping comments provided by IAATO. All the information in this letter was considered by EPA in the preparation of the Draft EIS. EPA also notes that IAATO's letter of July 30, 1998, is incorporated by reference into its comment letter on the Draft EIS dated April 2, 2001; see IAATO-5 and IAATO-19.

July 30, 1998

Ms Katherine Biggs  
Mr Joseph Montgomery  
Office of Federal Activities (2252A)  
U.S. Environmental Protection Agency  
401 M Street SW  
Washington D.C. 20460  
(202) 564 7157

### Implementation of the Antarctic Conservation Act

Dear Ms. Biggs and Mr. Montgomery,

IAATO is pleased to provide written comment, following the second public scoping meeting on July 14, 1998. Presentations were made by eight individuals representing IAATO and U.S. Antarctic operators: Abercrombie & Kent, Clipper Cruise Line, Orient Lines, Quark Expeditions, Society Expeditions, Special Expeditions, and Zegrahm Expeditions.

Much of the comment was aimed at streamlining of documentation requirements, which Beth Clark Marks, representing the Antarctic Project, supported in her response at the end of the meeting. Many speakers emphasized the international, cooperative nature of Antarctic tourism. Our counsel Buzz Bailey (Garvey, Schubert & Barer), underscored that reciprocity was a foundation of international treaties and that it would not be unusual for the EPA to recognize authorization by other appropriate national authorities in the promulgation of the Final Rule for environmental impact assessment of nongovernmental activities in Antarctica. This was a significant concern expressed by many at the scoping meeting.

IAATO-52

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Page Two

After I introduced a number of issues, Denise Landau (Quark Expeditions, Zegrahm) spoke of some of the difficulties in providing advance notification and environmental documentation on activities sponsored by several operators. She gave specific examples of difficulties already encountered. Deborah Natansohn (Orient Line) in her capacity as an executive of the Cruise Line Association of America spoke of the basic rights of Freedom of Travel and Freedom of the Seas and the danger that EPA may in its zeal infringe on these fundamental rights. Victoria Underwood (Abercrombie & Kent) documented the nature of Antarctic tourism, where many of the same activities by the same operators continue year-after-year at approximately the same level with the same ships and same staff, arguing for multi-year documents. Naomi Morse (Clipper) emphasized that the EPA should use the flexibility granted it by Congress to put into place the most cost-effective and efficient rule that avoids duplication of efforts and paperwork. John Tillotson (Society Expeditions) described the model for choosing and managing Antarctic visitor sites, emphasizing current good practices that include systematic data collection and regular exchange of environmental information. He pointed out the value of cooperation and aggressive self-regulation in protecting the Antarctic environment as demonstrated by the work of IAATO. Tom Ritchie (Special Expeditions) noted the great opportunity presented by IAATO members as a group of committed, environmentally responsible and self-governing companies that are organized and responsive.

(IAATO-52)

Thank you for your careful consideration of these comments and other concerns expressed by Antarctic tour operators. As secretary of IAATO, I continue to be struck by the dedication and experience of members and their commitment to safe and environmentally responsible private sector travel to Antarctica.

Sincerely,

*Daniel Schoeling*



## RESPONSE TO COMMENTS

EPA Scoping Meeting  
Final Rule  
July 18, 1998  
Statement by Darrel Schoeling  
Page 1

### Commentor:

IAATO-53

This information was considered by EPA in the preparation of the Draft EIS.

My name is Darrel Schoeling, secretary of the International Association of Antarctica Tour Operators, and I am speaking today on behalf of the Association. IAATO is encouraged by some recent actions of the EPA, particularly the extension of the Interim Final Rule (as published in the Federal Register April 15, 1998) and the scheduling of this second opportunity to provide public comment.

Represented today are all U.S. Antarctic tour operators with the exception of IAATO charter member, Mountain Travel Sobek, whose president Richard Weiss sends his regrets. He had planned to be here but had to cancel at the last moment. We appreciate the scheduling of this meeting in conjunction with the 10<sup>th</sup> annual meeting of the National Science Foundation and Antarctic tour operators.

IAATO suggested in its letter of June 27, 1997 to Richard Sanderson that comments "would be more meaningful if they reflect the real, practical issues encountered in the assessment process." That is what we will report today. Many of the comments you will hear echo our letter of August 25, 1997, provided in response to the "Notice of Intent to Prepare an Environmental Impact Assessment for the Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica." We encourage the EPA to refer to this letter and to take it seriously in the elaboration of the Final Rule.

It has been repeatedly suggested to us that the primary value of the EIA process is as an effective planning tool and, in fact, that turned out to be true. It has led us to think systematically about our Antarctic activities and to document potential impacts. The process has also made it clear what EIA is NOT. It:

- Does NOT provide for comprehensive protection of the Antarctic Environment;
- CANNOT cover all Antarctic tourism, just that of US organizers; and
- Is NOT a management plan or guide to management for individual sites.

—IAATO-53

As indicated in our letter of August 25, 1997 -- and also in the June 22, 1998 letter by Eldon Greenberg in response to the "Information Collection Request" -- we see a number of areas where EPA can improve upon the Interim Rule. We support, in general, the approach of the Interim Rule -- and our comments today are in the interest of improving upon it, especially with regard to streamlining of documentation and recognition of voluntary measures.

These issues include:

- Provision for multi-year filing. There is no automatic need for annual documentation;
- Allowance for a "categorical exclusion" of certain types of activities such as Antarctic activities organized along a carefully defined "Lindblad Model;"
- Elimination of the category "PERM" and requirement for "updates" since it duplicates "Advance Notification;"

And, most significantly:

- the allowance for reciprocity with other appropriate national authorities so that the same activity by the same operator will not require redundant and time-consuming engagement with multiple authorities.

US-based Antarctic tour operators are a small group of well-organized and responsive companies that are in the business of environmental education. We take our responsibilities in the Antarctic seriously -- and trust that the EPA will take advantage of the opportunity to work with private industry to protect the Antarctic environment in promulgation of the Final Rule. Thank you for consideration of these comments.

IAATO-54

## RESPONSE TO COMMENTS

### Commentor:

IAATO-54

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; also see the following:

IAATO-37 regarding the issue of multi-year environmental documentation;  
IAATO-9 regarding the issue of categorical exclusions;  
IAATO-8 regarding the issue of PERMs;  
IAATO-48 regarding the issue of updates duplicating Advance Notification; and  
IAATO-7 regarding the issue of reciprocity.

**EPA Scoping Meeting on the Final Rule, July 1998**

**Implementation of the Antarctic Conservation Act**

Good Afternoon, My name is Denise Landau and I'm here representing and speaking for US based tour operators: Quark Expeditions, Clipper Cruise Line and Zegrahm Expeditions. I would like to discuss the international nature of Antarctic Tourism relative to ship operating companies and the submission of EIAs.

Overview of Antarctic Tourism

IAATO consists of:

- 28 membered companies from 10 countries.
- 15 out of the 15 ships are operated by IAATO member companies
- One Land Based operator ANI, 1 Yacht Operator and the rest are ship operators
- 9 of the 28 are Full or Provisional Members of IAATO are the primary ship operators.
- Of that 9, there are 5 members (representing 8 out of the 14 vessels who are US
- In addition there are two full member companies who charter vessels from one of the nine ship operators.

Who is the Organizer?

IAATO members subcharter ships from each other, which can often cause confusion as to who the actual "organizer" is of the voyage. This is an important consideration should any one nation put into place unusually stringent laws and obligations. For example

- Quark Expeditions will operate the Kapitan Khlebnikov, Vavilov, Multanovskiy, and Molchanov. In addition Quark will subcharter 3 departures from Clipper Cruise Line on board the Clipper Adventurer.
- Zegrahm Expeditions also will subcharter this upcoming season the Clipper Adventurer.
- Clipper Cruise Line operates the vessel the Clipper Adventurer.
- Australian based Aurora Expeditions subcharters from Quark Expeditions the Kapitan Khlebnikov and the Molchanov.
- Quark and Zegrahm subcharter from Clipper Cruise Line

These examples demonstrate that tour operators have a choice of which national authority to provide Advance Notification – and it is not always clear who would be the most appropriate. The "organizer" of any particular voyages can be confusing. Subcharterers

**RESPONSE TO COMMENTS**

**Commentor:**

IAATO-55

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; also see response to IAATO-7 regarding the issue of reciprocity.

IAATO-55

can and do sometimes provide their own staff and are responsible for adherence to IAATO guidelines, relevant national legislation, Treaty Recommendation XV111-1 etc.

As you can see from the above interrelationships, Antarctic tourism is a complicated industry which has succeeded due to the voluntary spirit within the industry and the willingness to self regulate.

On behalf of Zegrahm Expeditions, Werner Zehnder would like to emphasize the point he made last year that he could become Zimbabwe company and charter a ship with Pakistani Crew and Egyptian staff. None of these countries are currently either Consultative or Non-Consultative parties to the Antarctica or Treaty or perhaps interested in ratifying the protocol.

At present, tour operators find themselves in the arduous position of having to submit multiple environmental impact assessment documents for the same activity to comply with varied format requirements of the treaty parties. Duplication should be minimized wherever possible and reciprocal agreements put into place.

#### Reciprocity

Even if an authority will accept the same document, the schedule for submission may be different and regardless it still requires understanding and following the procedures of more than one government office. The comments received from the various national authorities can also be conflicting.

- NZ based Heritage Cruise Lines submits IEE's to New Zealand. If a US company subcharters the Shokalski and the Shokalski's IEE and operation meets the obligations of NZ it would be optimal that EPA would accept the IEE written by a NZ company for the US subcharter. This would both reduce unnecessary paper work and duplication of effort
- Hapag Lloyd is required to submit an EIA to the German government. If a US company subcharters from Hapag Lloyd, the US company would have to rewrite the environmental assessment to German standards.
- Australian companies submit Environmental Impact Assessments, however under Australian legislation, the PEA's are acceptable for most tourism activities.
- Australian based company Aurora Expeditions and two US companies, Quark and Zegrahm Expeditions submitted a JOINT IEE to both the US and to Australia during the 1997/98 operating season.
- Currently Canada has no EIA requirements. Two companies operating trips to Antarctica are not required to submit EIA's. Marine Expeditions present today, however has participated fully in the writing and planning process of the US based

(IAATO-55)

Programmatic IEE and voluntarily. operates their business as if Canada has ratified the Protocol.

- Canadian based Adventure Network International, land based tourism works closely with the UK Foreign Office and this year will submit their IEE to the U.K and apply for a permit to operate in Antarctica through the U.K. Again, this is voluntary on behalf of MEI and ANI and proves how responsible these operators can be despite being located in a country that has not ratified the protocol.

#### Various National Obligations

##### **Sweden**

Legislation in Sweden requires that each citizen be issued a permit when traveling to Antarctica, however Sweden has agreed that if a Swedish citizen is traveling to Antarctica with a company who has fulfilled the obligations of the country of which the operator is established the citizen will not be required to apply for a permit. Until last year all US companies carrying Swedish citizens, pax, crew had to submit to Sweden an IEE "Form" which covered the ship operation. Quark, MEI, A&K/ESC all had submitted this on file with the Swedish government. *Fortunately Sweden has within their legislation that now individual citizens don't have to apply for a permit if the ship company has fulfilled their own national requirements.* This is an example of how a treaty party can flexible to minimize the paper work requirements of the operator.

(IAATO-55)

##### **United Kingdom**

The United Kingdom permits companies and private expeditions. Their actual law as it relates to tourism is "an expedition is defined in the Act as any tour or other journey, whatever its purpose, made by one or more person. It is a British expedition if: 1) it was organized in the U.K. and if the place of final departure for Antarctica of the expedition was in the UK (ie Falkland Islands) of the extension of the Act to UK. A permit must be applied for and an EIA submitted. UK nationals are prohibited from activities in Antarctica *unless they have a permit, or written authorization from another contracting party.* Again, another example of a reciprocal agreement.

Norway requires that an EIA be produced anytime Norwegian Territory is entered. That means that technically if the Kapitan Khlebnikov lands passengers in Droning Maud Land, then an EIA will have to be submitted to the US because Quark as a US company operates the ship and to the Norwegians. It would be of particular interest to Quark that Norway and the US agree on the content of an IEE and that there would be reciprocity between countries. I'm not even going to bring up the issue of Sovereignty.

Japan's recent implementation of the Environmental Protocol states that: Japanese law is applied to Japanese Nationals and aliens residing in Japan or to Japanese nationals who are not currently living in Japan, Japanese employees engaging in Antarctic Activities or are involved in the supervision of Antarctic Activities in connection with the business. *Like the U.K, Japan will accept written authorization from a contracting party.*

**Netherlands:** a permit is required for an "organizer but does not require an individual citizen to have permit. An organizer is required to submit an ELA and if the ELA meets with the Netherlands approval, than a permit is issued. Currently a Dutch company owns one of the Russian Registered ships. The ship is operated by American and Australian companies.

**Finland:** Requires a permit for most activities in Antarctica including science and tourism. The law applies to Finnish citizens, Finnish legal person, vessels, foreign citizens permanently resident in Finland and vessels which take part in expeditions origination or arranged from Finland. Organizers are required to submit and ELA.

#### Conclusion

As you can see by the complexities of various legislation and the fact that Organizers or companies charter ships from one another its an international challenge. Although the Environmental Protocol serves to protect Antarctica it has created a paper work challenge for tour operators who are conscientious and want to make sure we are following the correct procedures.

We appreciate the flexibility that EPA has shown in working with U.S.-based tour operators thus far. As responsible tour operators with a long term interest in visiting and protecting Antarctica we look towards international cooperation, acceptance of multiple year IEE's, reciprocity between nations regarding the production and writing of ELA's. We commend EPA for extending the final rule for 2 years in light of the time period required to test the practical feasibility and how it relates to the International nature of Antarctic tourism.

Thank you or listening to our concerns.

Denise Landau  
Environmental Officer, Quark Expeditions  
Representative of Zegrahm Expeditions  
Representative of Clipper Cruise Line

— (IAATO-55)

**EPA's 2nd Scoping Meeting for EPA's Environmental Impact Statement  
 for the final rule for environmental impact assessment of  
 nongovernmental activities in Antarctica**

**July 14, 1998**

**Statement by Victoria Underwood**

Good afternoon and thank you for allowing me to speak before you today about EPA's Environmental Impact Statement for the final rule for environmental impact assessment of nongovernmental activities in Antarctica.

My name is Victoria Underwood and I am Antarctic Environmental Officer for Abercrombie & Kent and Explorer Shipping Corporation who own and operate the expedition ship, m/s Explorer. I am joined today by Charlie Scarlett, president of Explorer Shipping Corp.

My career in the travel industry dates back to 1982, however I have been involved with the Explorer since 1986 and have participated in over forty voyages to the Antarctic, primarily to the Peninsula region, but also to the Ross Sea. I am one of the co-authors of the IAATO visitor and tour operator guidelines that served as a foundation for Recommendation XVIII-1, adopted by the Antarctic Treaty Party system. For the last three years I have served on the Executive Committee of IAATO and recently attended the XXII Antarctic Treaty Consultative Meeting in Tromsø, Norway, along with other industry representatives.

For your background information, Explorer Shipping Corporation is an off-shore company chartered in the British Virgin Islands. Abercrombie & Kent, our parent company, was founded as a safari company in 1962 in Nairobi, Kenya and is today an international group of companies, with offices in 27 countries world-wide. A&K provides upscale adventures in more than 100 countries and on all seven continents. Headquartered in Oak Brook, Illinois, A&K also has offices in England, Egypt, Kenya, South Africa, Tanzania, Uganda, Zimbabwe, China, India, Japan, Thailand, Australia, New Zealand, Denmark, France, Germany, Italy and Spain. A&K employs more than 3,000 travel professionals around the world and has served more than 500,000 clients. My reasoning for mentioning the organization structure of our company, as have other speakers to the organization of their company's, is to point out the complexity of our industry.

The Explorer, registered in Monrovia, Liberia, is a small expedition cruise ship, carrying 96 passengers, and was the first ship purposely built for polar expedition cruising. She has operated in the Antarctic continuously since 1970 -- first as the Lindblad Explorer (from 1970 until 1984), then as the Society Explorer (from 1984 until 1992) and since

**RESPONSE TO COMMENTS**

**Commentor:**

IAATO-56

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; also see the following:  
 IAATO-20 regarding streamlining documentation and paperwork reduction provisions;  
 IAATO-8 regarding the issue of PERMs; and  
 IAATO-42 regarding the issue of assessment and verification information.

IAATO-56

1992 as the Explorer, the flagship of A&K. It is a noteworthy achievement within this industry to see the same ship, operate with many of the same staff, offering essentially the same itineraries to the same number of travelers for twenty-eight years now.

Before addressing two specific issues, we would like to commend EPA on extending the Interim Final Rule through the 2000-2001 austral summer. This allows the tour operators to gain experience with the Rule itself and to ensure that the industry is more informed and better able to comment on EPA's environmental impact statement. We have been watching the development of the rule-making process with great interest and thank you for the opportunity to comment today.

In my comments, I would like to address two specific issues: 1) The need to streamline documentation, and 2) Support for one document for multiple operators covering multiple expeditions over several seasons. The reasoning behind this is as follows:

- Activities by the tour industry have been substantially similar from year-to-year. For example, the Explorer is about to begin her twenty-ninth season of operation in the Antarctic. Many of the officers, crew and expedition staff have been aboard for years. Our staff, in fact, average nine years of experience in the Antarctic. Nearly all of the places we visit are the same, and the same type of activity is being carried out. The same can also be said for many of the other ships presently being operated in the Antarctic by IAATO member companies. The World Discoverer, for example, operated by Society Expeditions, has been conducting voyages to Antarctica since 1977. The Bremen (formerly the Frontier Spirit), operated by Hapag-Lloyd, has been there since 1989. Several of the Russian ships operated by Mountain Travel / Sobek, Quark Expeditions, and Marine Expeditions, among others, have been employed since the early 1990s.
- This model of ship-based tourism, as developed by Lars-Eric Lindblad in the late 1960s, has been the same model that has been replicated by all of the Antarctic tour operators represented here today. The "Lindblad" model of responsible tourism has also been adopted by some of the larger ships, for example the Marco Polo. Lars-Eric Lindblad designed the Antarctic program for Orient Lines and led the voyages for the first few seasons. In addition, Orient Lines has hired some of the same expedition staff and crew who were trained by Lindblad himself or had worked for other companies operating under this same model.
- Many industry representatives have also been trained under the "Lindblad" model, including:

Werner Zehnder, who first started working for Lindblad as a chef aboard the Explorer in 1969 (aboard her maiden voyage) and later as an Expedition Leader for Society Expeditions for 7 years before becoming Sr. V.P. of Planning and Operations. In

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1990, he and a group of expedition leaders and naturalists founded Zegrahm Expeditions. Werner continues to charter vessels from several of the IAATO member companies to operate his own voyages to the Antarctic.

Mike McDowell, who began working aboard the Explorer with Lindblad in 1977 as a staff assistant and Zodiac driver, and worked as an expedition leader until 1984. Since 1985, Mike has been one of the co-owners of Quark Expeditions and, along with Werner Zehnder, is considered to be one of the visionaries in the expedition tourism industry. Continuing in the Lindblad tradition of opening up new areas to tourism, Quark offered the first complete circumnavigation of Antarctica during the 1996-97 season, and has offered pioneering voyages to the Weddell Sea.

Baerbel Kraemer, head of ship operations and environmental affairs with Hapag Lloyd, responsible for the operations of the Hanseatic and Bremen, began her career as purser, cruise director and later as hotel manager aboard the Explorer, from 1978 to 1991. (Baerbel also has many years of experience working aboard the World Discoverer -- as do I.)

(IAATO-56)

Nigel Sitwell worked aboard many voyages of the Lindblad Explorer in the 1970s and 1980s as a lecturer. Since then he has been employed as an Antarctic expedition leader or lecturer aboard the Illiria, Alla Tarasova (now the Clipper Adventurer), Ocean Princess, Khromov and Marco Polo.

Finally, Lindblad's son, Sven-Olaf Lindblad, president of Special Expeditions, will, continue the Lindblad tradition of trips to the Antarctic this season aboard the Caledonian Star. Special Expeditions has employed Tom Ritchie, a very experienced expedition leader who worked aboard the Explorer from 1977 - 1984 and Captain Leif Skog as master. Leif was affiliated with the Explorer for many years in the late 1970s and early 1980s and again for several years during the mid-1990s with A&K / Explorer Shipping Corp. He now oversees the marine operations for Special Expeditions.

These individuals are but a few of the many, many people who are still working in the Antarctic industry today, carrying on the tradition started in the 1960s by Lars-Eric Lindblad. All of this is very important not only for experience within the industry, but also for the cooperative and voluntary spirit that exists today between competing companies.

- To comply with regulations under the Interim Final Regulations for Environmental Impact Assessment of Nongovernmental Activities in Antarctica [40 CFR Par 8.2.], five U.S. based companies submitted environmental documentation regarding its planned activities during the 1997-1998 austral season to EPA for its review. Documentation included the following:

- a) transmittal letter;
- b) "Notice of Intent to Travel";
- c) consolidated document entitled "Initial Environmental Assessment: Ship Based Tourism by Five U.S. Organizers"

- The "Notice of Intent to Travel" is the same as the "Advance Notification of Intent to Travel" as submitted to the U.S. Department of State in fulfillment of obligations under Section 7 of the Antarctic Conservation Act implementing paragraph 5 of Article 7 of the Antarctic Treaty, and as further amplified by Recommendation XVIII-1 of the Antarctic Treaty System.
- Information submitted to the State Department by tour operators under "Advance Notification" includes the following, which is contained in Attachment A "Information to be Provided in Advance Notice" under ATCM Recommendation XVIII-1 "Guidance for Those Organising and Conducting Tourism and Non-governmental Activities in the Antarctic":

- a) Activities to be undertaken and purpose and intended itinerary, including the date of departure of and places to be visited in the Antarctic Treaty Area;
- b) Registered name and national registration of the vessel to be used;
- c) Name, nationality and contact details of organiser;
- d) Number and qualifications of crew and accompanying guides and expedition staff;
- e) Estimated number of visitors to be carried;
- f) Intended use of vessel (or aircraft if applicable);
- g) Number and type of other vessels, including small boats, to be used in the Antarctic Treaty Area;
- h) Information about insurance coverage;
- i) Details of equipment to be used, including for safety purposes, and arrangements for self-sufficiency;
- j) Other matters required by national laws

- As the "Advance Notification" mandated by the Antarctic Treaty system, especially as elaborated in Recommendation XVIII-1 includes much -- if not all -- of the information required in an IEE, IAATO's position is that the request for a Preliminary Environmental Review Memorandum (PERM) be omitted from the Final Rule as it duplicates the information already required by the Treaty. Secondly there is no need for an "update" as mentioned in the Information Collection Request (ICR) by EPA (section 3d) as this again duplicates notification.

This follows the line of thinking as echoed in the "Summary of Questions / Answers on the Interim Final Rule" (dated 08 July 1997, signed by Mr. William Dickerson, EPA),

(IAATO-56)

whereby EPA has stated that..."some of the general requirements for environmental documentation are the same as for the information provided to the Department of State for notification purposes (see 40 CFR Part 8.4(a))."

- IAATO proposes that the Preliminary Environmental Review Memorandum, as a category, be deleted from the Final Rule as this is again a duplication of effort and defeats the goal of reducing paperwork. The filing of annual documentation to the Department of State under Treaty obligations and also to the EPA as a PERM is burdensome and unnecessary.
- Tour operators have the strongest interest in the development of a sound, workable system for conducting environmental assessments of nongovernmental activities in the Antarctic which are consistent with the requirements of the Protocol and the various national regulations which apply.
- As the old adage goes, "If it ain't broke, don't fix it." This reasoning is echoed in the following quote by Mr. Richard Sanderson, of EPA, in the "Summary of Questions / Answers on the Interim Final Rule," dated July 8th, 1997:

(IAATO-56)

"The tour industry has had a long-standing tradition of voluntary compliance with the establishment of industry-established guidelines. Some of these guidelines are being adopted by the Antarctic Treaty Consultative Meeting on a trial basis and tour operators provide post-season reports to the National Science Foundation. EPA needs to factor these voluntary programs into its final rule; e.g. if the system now used is good and works, base the rule on its continued use."

- With this in mind, tour operators recognize that certain elements of this voluntary process are present in the Interim Final Rule, for example notification and post-trip verification reporting. Tour operators therefore strongly recommend that the EPA consider the voluntary process in developing the Final Rule.
- IAATO therefore does not see the need to automatically require that operators file an environmental assessment with EPA on an annual basis. In some cases, companies have been operating at the same level of activity aboard the same vessels with the same staff for decades and, arguably, could be considered an existing activity. IAATO sees no value in asking for resubmission of documentation annually for these operators. A provision should be made in the Final Rule for a multi-year submission based on a projection of future activities.
- EPA's mandate is to promulgate regulations "to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty." Given the small number of U.S. private operators and the record of self-



regulation by the Antarctic tour industry, IAATO sees a broad interpretation of this mandate as misguided with potentially serious consequences to the Antarctic environment. An unnecessary burdensome, prescriptive rule could drive experienced Antarctic tour operators off-shore -- potentially to a country that is not a party to the Treaty -- or out of business and dismantle the current flexible and proven approach to limiting impacts.

Thank you once again for the opportunity to raise these issues.

— (IAATO-56)

Clipper Cruise Line comments to EPA on July 14, 1998

Although this is our first season in the Antarctic with the *Clipper Adventurer*, Clipper Cruise Line operated in Antarctic for 3 years with the *World Discover* and we a similar level of activity and educational programming for our new ship.

Our preparations for the 1998/99 Antarctic season continued when we officially rejoined IAATO last summer. IAATO has been instrumental in sharing with Clipper the procedures and concerns we need to be aware of before our ship enters the Antarctic area.

We have provided advance notification to the U.S. Department of State, with copies to IAATO. Our ship is in compliance with all MARPOL, ISM and ISO requirements. We have hired qualified experienced staff and have put together a wealth of information to be sent to our passengers before they even board the vessel.

Like many other US tour operators operating cruises in Antarctica, we are small, US based and involved in many other areas of the globe besides Antarctica.

We can only ask that the EPA take its mandate to streamline documentation and obligations seriously and make the IEE process as efficient as possible. The purpose and scope of the Final Rule should be to report potential environmental impacts. An IEE that would cover several years would be most helpful. In addition, the advance notification we send to the State Department could serve as a yearly update to the IEE.

We are encouraged that we will be able to submit an IEE that has already been prepared by other US tour operators. IAATO members voluntarily work together on so many issues that cumbersome reports year after year seem costly, redundant and wasteful.

IAATO-57

RESPONSE TO COMMENTS

Commentor:

IAATO-57

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in IAATO's April 2, 2001 letter; also see the following:

IAATO-20 regarding paperwork reduction; and  
IAATO-37 regarding multi-year environmental documentation.

## RESPONSE TO COMMENTS

### Commentor:

IAATO-58

This information was considered by EPA in the preparation of the Draft EIS.

EPA Scoping Meeting of July 14, 1998.

### Special Expeditions Conservation and Management Experience in Relation to IAATO Presented by Tom Ritchie, Expedition Leader, Special Expeditions.

Special Expeditions (SPEX) is proud to be the newest member of IAATO. In order to explain the significance of this new relationship, it is important first to establish a degree of credibility for those people not familiar with SPEX. The company was established in 1979, as a division of Lindblad Travel, and became independent the following year. Its president is Sven Olof Lindblad, son of the late Lars-Eric Lindblad who pioneered adventure travel. As expected, SPEX operates on the Lindblad Model of tourism. Our field personnel are largely composed of biologists, naturalists, and wildlife photographers who believe that you can turn people on to the wonders of nature, and they will care and participate in its preservation. The company has built a business on environmental education and client experience, and has earned a reputation in the conservation community as an innovative leader in environmentally responsible travel.

In 1993, SPEX received the ASTA/Smithsonian award for environmental achievement, primarily for the floating symposiums that we hosted to foster participatory management strategies for destinations like Baja California, Mexico, and Central America. The SPEX clientele, like that of other IAATO members, are generally well-educated, well-traveled people, many of whom already have a strong conservation ethic and support environmental protection through international NGOs. The staff of naturalist guides also have a strong environmental ethic, and environmental responsibility and stewardship is part of their interpretive framework. The company has a handbook of internal environmental policies for the field, including necessary briefing to passengers before landings, and how to conduct groups around seabird colonies, marine mammals, etc.

We design a conservation strategy by asking ourselves "How can we be a positive force in our destinations?" It is important to establish communication and credibility with the management or leadership of various destinations, and with the local conservation organizations. Sometimes this is difficult because management bodies do not exist, or there may be no interest in communicating with the private sector. One must also learn the conservation needs (management objectives) of the destination. Next, we examine our abilities, which vary greatly in each area and try to best match our abilities with the defined conservation needs of an area. In places where we have been able to integrate ourselves into the regional conservation community and management process, we have achieved things such as the initiation of local guide-training programs, whalewatching standards, and safety criteria, as well as the introduction of conservation organizations (NGOs) and internship programs into certain areas, and most importantly, establish forums for dialogue between management, NGOs, private sector, and local communities.

Among the case studies in the aforementioned management relationships is Baja California, Mexico. When we first operated in Baja in 1981, there was literally no management of an incredibly rich and fragile desert and marine environment. There was also no competition, which enabled us to operate freely. These conditions were perfect in that we had a very strong environmental ethic and communicated environmental messages to our passengers. As time went on and the Sea of Cortez and the Pacific gray whale lagoons became more popular, we realized that there had to be some kind of management, so we started to actively engage government authorities, NGOs, researchers, local communities, and tour operators into active dialogue about the importance of managing the area for

IAATO-58

the future. Much of the success in this endeavor was achieved through the use of our ships as symposia platforms. Today, most major international conservation NGOs are actively working in Baja, and the Mexican government has established management policies and is now working with NGOs and the private sector on a long-term management strategy for the Sea of Cortez.

This mentality is likewise to be found among the members of IAATO. The fact that a like-minded body of environmentally concerned tour operators like IAATO exists is an incredible opportunity for anyone concerned with environmental protection to work with and through those people who are already engaged in environmental education and management of visitor impact and experience, and who have a vested interest in the long-term integrity of that environment.

It is an honor for Special Expeditions to be welcomed as a new member into the community of IAATO. The fact that a self-governing body of environmentally concerned tour operators is already in place is a monumental achievement and opportunity. Special Expeditions would encourage the EPA, and anyone trying to establish management or conservation policies in Antarctica, to appreciate the great opportunity in environmental protection that IAATO provides. The IAATO members are the kind of tour operators that you WANT to have in Antarctica. They serve the function of environmental education to visitors, and they provide an opportunity for any management body to communicate desired messages to visitors. IAATO members can provide an important monitoring function in that they are on site, and have a vested interest in the health and integrity of landing sites and flora and fauna. No management body is going to have the funds to provide the monitoring or presence that IAATO members can provide. IAATO members can provide any management body valuable feedback and realistic analysis of field conditions and visitor impacts that would be virtually impossible to understand otherwise.

We encourage the EPA to listen closely to the members of IAATO because they have more than simple experience in Antarctica, but have a soulful concern for the maintenance of its future. The mere fact that these tour operators organized together to set guidelines and standards for operation and establish a forum for communication should show the EPA that the ambassadors for environmental protection in Antarctica are already in place.

-(IAATO-58)



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Denise Landau  
Executive Secretary


Joseph Montgomery  
and  
B. Katherine Biggs  
Office of Federal Activities  
Mail Code 2252A  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave. N.W.  
Washington, D.C. 20460

Dear Joe and Katy,

I reviewed the Draft EIS that applies to tourism vessels in Antarctica, and comments were incorporated in a version that Denise Landau co-ordinated. I noticed that reference to the Antarctic circumnavigation by tour vessel in 1996-97 was the Quark document. For further information in a published source, I have enclosed here a reprint of an article for each of you that was published in Polar Record following the event.

The map was not published with the article, but is included here for further information.

Sincerely,

  
John Splettsstoesser  
IAATO Representative  
P.O. Box 88  
Spruce Head, ME 04859  
email: [jspletts@midcoast.com](mailto:jspletts@midcoast.com)  
tel/fax: 207 - 594 - 7594

cc: Denise Landau

## RESPONSE TO COMMENTS

Commentor:	
IAATO Rep-1	EPA acknowledges that comments by the IAATO Representative were incorporated into IAATO's comment letter.
IAATO Rep-2	EPA appreciates receipt of the article, "First circumnavigation of Antarctica by tourist ship" ( <i>Polar Record</i> , vol. 33, no. 186, p. 244-245, July 1997), and the additional information it provides on the first circumnavigation of Antarctica by a tourist ship.

IAATO  
Rep-1

IAATO  
Rep-2

POLAR RECORD, vol. 33, no. 186, p. 244-245, July 1997

### First circumnavigation of Antarctica by tourist ship

**John F. Spletstoesser**

235 Camden Street, Suite 32-132, Rockland, Maine 04841, USA

**Robert K. Headland**

Scott Polar Research Institute, University of Cambridge, Lensfield Road, Cambridge CB2 1ER

**Frank Todd**

8958 Kobe Way, San Diego, CA 92123, USA

Received February 1997

The Russian icebreaker *Kapitan Khlebnikov* completed the tenth circumnavigation of Antarctica during the 1996-1997 austral summer, starting in Port Stanley, Falkland Islands, on 24 November 1996 and travelling eastward around the continent before returning to the same port on 27 January 1997. The cruise encompassed some 12,565 nautical miles (23,270 km) south of 60°S, spent nearly 59

days south of that latitude, crossed the Antarctic Circle eight times, and reached a farthest south in McMurdo Sound of 77° 51.45'S, 166° 39'E. The ship carried 66 passengers and 27 staff for the first adventure travel voyage of its type, and visited several scientific research stations that had never received tourist visits previously. Announced passenger fares ranged from \$US29,900 to \$US55,000. There were 13 nationalities included in the passenger and staff list, and the Russian officers and crew numbered 61. The cruise was chartered and organised by Quark Expeditions of Darien, Connecticut.

The first recorded circumnavigation of Antarctica was accomplished by Captain James Cook during his second voyage aboard HMS *Resolution* and accompanied by HMS *Adventure* in 1772-1775, crossing the Antarctic Circle for the first time on 17 January 1773. Other voyages of circumnavigation are listed in Table 1. Shipborne tourism in Antarctica has been active continuously since 1965 (Headland 1994), with some 80,000 tourists having visited the continent to date. A much smaller number have been to Antarctica via commercial flights to the interior.

*Kapitan Khlebnikov* completed her fifth season of tourism travel in Antarctica in 1996/97. In 1992, prior to her first Antarctic cruise, she had become the first Russian icebreaker to complete the Northwest Passage (Spletstoesser and Spletstoesser 1993), a cruise captained by Peter Golikov, who was also the master during the circumnavigation.

The ship initially travelled south, stopping in the South Orkney Islands before heading into the Weddell Sea. As the ship

Table 1. History of Antarctic circumnavigations.

Years	Captain	Ship(s)
1772-75	James Cook	HMS <i>Resolution</i> HMS <i>Adventure</i>
1819-21	Thaddeus Bellingshausen	<i>Vostok</i>
1830-33	John Biscoe	<i>Tula</i>
1930-31	Hjalmar Riiser-Larsen/ Nils Larsen	<i>Norvegia</i>
1931-33	David John/William Carey	<i>Discovery II</i>
1933-34	Lars Christensen/ Klarius Mikkelsen	<i>Thorshavn</i>
1937-39	Leonard Hill	<i>Discovery II</i>
1982-83	Nikolay Elin	<i>Faddey Bellingshausen</i>
	Roman Panchenko	<i>Admiral Vladimirovsky</i>
1982-83	Joseph Smith	USCG <i>Polar Star</i>
1996-97	Peter Golikov	<i>Kapitan Khlebnikov</i>

Table 2. Shore stops and sites visited.

Date	Site visited
24 Nov 96	Port Stanley, Falkland Islands (start)
27 Nov	Shingle Cove, Coronation Island, South Orkney Islands
2 Dec	Riiser-Larsen emperor penguin colony
4 Dec	Ekströmisen, Atka Bay emperor penguin colony
5 Dec	Neumayer Station (Germany)
6 Dec	Sanae Station III (South Africa)
8 Dec	Lazarev Ice Shelf
12 Dec	Syowa Station (Japan)
14 Dec	Molodezhnaya Station (Russia)
15 Dec	Proclamation Island
16 Dec	Kloa Point emperor penguin colony; King Edward VIII Gull
17 Dec	Mawson Station (Australia)
18 Dec	Murray Monolith; Scullin Monolith
19 Dec	Cape Darley (Flutter) emperor penguin colony
21 Dec	Zhong Shan Station (China), Larsemann Hills

Date	Site visited
22 Dec	Davis Station (Australia); Gardner Island
27 Dec	Peterson Island; Casey Station (Australia)
31 Dec	Dumont d'Urville (France)
5 Jan 97	Cape Adare
6 Jan	Possession Islands; Cape Hallett
7 Jan	Campbell Glacier Tongue; Mt Melbourne
8 Jan	Franklin Island
9 Jan	Cape Evans; Cape Royds
10 Jan	Scott Base (New Zealand); McMurdo (USA); Hut Point; Taylor Valley
11 Jan	Ross Ice Shelf
19 Jan	Peter I Øy
21 Jan	Petermann Island; Cuverville Island
22 Jan	Deception Island; Halfmoon Island; Teniente Camara Station (Argentina)
23 Jan	Aitcho Island; Penguin Island; Turret Point
24 Jan	Elephant Island
27 Jan	Port Stanley, Falkland Islands (end)

continued eastward, it stopped at numerous little-visited emperor penguin colonies as well as at 12 national research stations, beginning with the German Neumayer Station, which is adjacent to the Atka Bay penguin colony (see Spletstoesser 1997 for a report on earlier observations made at that site). Some of the stations had not had any visits since their wintering period began. A complete list of stops is given in Table 2.

### References

Headland, R.K. 1994. Historical development of Antarctic

tourism. *Annals of Tourism Research* 21 (2): 269-280.  
Spletstoesser, J. 1997. Mortality among chicks in the emperor penguin (*Aptenodytes forsteri*) colony at Riiser-Larsen Ice Shelf, Antarctica. *Polar Record* 33 (184): 63-64.  
Spletstoesser, J., and B.D. Spletstoesser. 1993. The first transit of the Northwest Passage by Russian icebreaker. *Polar Record* 29 (169): 148.

The accuracy of references in the text and in this list is the responsibility of the authors, to whom queries should be addressed.



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ZEGRAHM EXPEDITIONS

T-711 P-001 APR 02 '01 11:00



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## RESPONSE TO COMMENTS

April 2, 2001

VIA FACSIMILE (202) 564-0070 AND MAIL

Mr. Joe Montgomery  
Ms. Katherine Biggs  
Environmental Protection Agency  
Office of Federal Activities  
1200 Pennsylvania Ave. N.W.  
Washington, D.C. 20460

Dear Mr. Montgomery and Ms. Biggs,

Thank you for sending the Draft Environmental Impact Statement for review and comment. We at Zegrahm Expeditions are appreciative of the comprehensive document and the respective task required to review the industry as a whole and formulate the "Final Rule." We appreciate the establishment of the "Interim Final Rule" and the willingness of EPA to allow a transition period, which we all could learn by, before initiating the Final Rule. We also appreciate the help and assistance given by EPA during the last several years to work with the tour operators and assure a "rule" that is practical.

Zegrahm Expeditions was formed in 1990, although many of our founders and expedition staff have been traveling to the Antarctic on tourist ships or as part of scientific expeditions for over 30 years. If we added up the cumulative experience of our management, leaders and guides we have over 500 trips to the Antarctic. We have jointly submitted IEE's as part of the US Tour Operators Peninsula IEE (1997, 1998, 1999, 2000 seasons) and the joint Quark Expeditions and Aurora Expeditions IEE (1997, 1998, 1999 seasons). We have chartered and organized numerous Peninsula, South Georgia and Falkland Islands voyages, have chartered and organized the icebreakers to the Weddell Sea, participated in the Circumnavigation of Antarctica with Quark Expeditions, have organized voyages to the Ross Sea, East Antarctica and to most of the Sub Antarctic Islands. We are one of the most experienced companies operating in Antarctica.

We support EPA's conclusion of Alternative number 2, however, we would like to see some modifications drawn from Alternative 5 as noted in the IAATO comments. In addition, we hope that EPA would remain flexible with the definition of "less than minor or transitory." We do not agree with Alternatives 3, 4 as noted in the IAATO comments and agree with the conclusions that EPA has made with regard to these alternatives not being feasible. We appreciate the thoroughness involved and explanations set forth in all the alternatives.

.../2

Commentor:

ZE-1

EPA acknowledges the appreciation expressed for the learning period between the Interim Final Rule and the proposed rule, and appreciates receipt of the information presented about Zegrahm Expeditions.

ZE-2

EPA notes that Zegrahm Expeditions supports Alternative 2, EPA's preferred alternative, but with modifications from Alternative 5. As noted by the Commentor, IAATO made this same comment (see IAATO- 3). With regard to the specific modifications referenced in IAATO's comments, see the following:  
IAATO-6 regarding the issue of EPA's review role and responsibilities;  
IAATO-7 regarding the issue of reciprocity;  
IAATO-8 regarding the issue of PERMs; and  
IAATO-9 regarding the issue of categorical exclusions.

ZE-3

The Protocol does not define "minor or transitory." Until the Treaty Parties provide guidance or definition, EPA believes it is reasonable to provide such guidance to operators and that it is prudent to define the term "more than a minor or transitory impact" consistent with the threshold definition applied to the environmental impact assessment of governmental activities in Antarctica as delineated in 16 U.S.C. §2401 *et seq.* At such time definition is provided under the Protocol or other appropriate means under the Treaty, EPA would amend its final rule, as appropriate, to ensure it is consistent with Annex I as required by the Act. (Also see IAATO-3.)

ZE-4

EPA notes that Zegrahm Expeditions agrees with EPA's analysis of Alternatives 3 and 4.

ZE-1

ZE-2

ZE-3

ZE-4



## RESPONSE TO COMMENTS

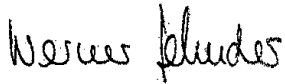
- 2 -

In the final document, however, we would like to see some drafting changes made. IAATO as an organization has suggested specific changes to the text in order to produce the highest quality work. Throughout the document reference is made to the "Quark IEE for the Kapitan Khlebnikov." Zegrahm co-authored this document for the 1997/98, 1998/99 and 1999/2000 seasons and would like to see it reflected as such.

We would also suggest updating the IAATO Bylaws versus using the out-of-date 1991 Bylaws in this document. IAATO's Bylaws can also be found on the IAATO website at [www.iaato.org](http://www.iaato.org).

If you have any questions please let me know. We appreciate the efforts put forth by EPA in this document and look forward to working with EPA in the future to assure the ultimate protection of Antarctica.

With kind regards,



Werner Zehnder  
Chief Executive Officer

**Commentor:**

ZE-5

Suggested edits will be incorporated into the Final EIS as appropriate.

-ZE-5

## RESPONSE TO COMMENTS

2 April 2001

Ms. Katherine Biggs  
 Mr. Joseph Montgomery  
 EPA Office of Federal Activities  
 1200 Pennsylvania Ave. NW (Mail Code 2252A)  
 Washington, DC 20460

Re: Draft EIS Comments

Dear Ms. Biggs and Mr. Montgomery:

On behalf of Oceanites, Inc., I am grateful for the opportunity to submit comments on EPA's Draft EIS for the Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica (published February 2001).

In respect of conducting the Antarctic Site Inventory project, Oceanites has submitted IEEs to EPA under 40 CFR Part 8 since 1997. Quite obviously, Oceanites and the Inventory are very much concerned with any potential changes to these requirements.

Further, appreciating that EPA/OFA considered and utilized a substantial amount of Inventory-generated data in fashioning this DEIS, Oceanites and I wish to ensure that the record for this rulemaking is as complete and up-to-date as possible, and that it reflects the project's most recent, peer-reviewed papers.

Our comments:

1. Support for Alternative 2.

Oceanites and I strongly support Alternative 2, the agency's preferred alternative, which greatly streamlines the 40 CFR Part 8 process and offers a very sensible, practical way forward with respect to future, EIA submissions by Oceanites.

As a nongovernmental research organization covered by these regulations, Oceanites particularly welcomes the opportunity to submit multi-year EIA documentation and to incorporate therein any relevant aspects of previous years' submissions. I agree with the DEIS analysis stating that this streamlining could reduce the paperwork burden for all who must comply with 40 CFR Part 8.

I also agree with the *threshold* the proposed rule establishes for "more than a minor

Commentor:	
O-1	EPA appreciates the information provided and acknowledges the appreciation expressed for referencing Oceanites' documents in the Draft EIS.
O-2	EPA notes that Oceanites supports Alternative 2, EPA's preferred alternative.
O-3	EPA notes that Oceanites supports a multi-year environmental document provision and agrees with EPA's analysis that this streamlining could reduce the paperwork burden for operators.
O-4	EPA notes that Oceanites supports a definition (or other provision) for the term "more than minor or transitory" and that this should be the same as applied to governmental activities under the Antarctic Conservation Act.

## RESPONSE TO COMMENTS

or transitory impact.” It is sensible to utilize the same threshold that applies in the assessment of governmental activities under the Antarctic Conservation Act (16 USC §2401 *et seq.*)

## 2. Non-support for Alternatives 1, 3, 4, and 5.

I do not support any of the four suggested alternatives, having thoroughly reviewed the discussion/analyses/scoping comments contained in the DEIS.

Alternative 1 maintains the status quo and the extant paperwork burden Oceanites now faces prior to each Antarctic research season. As noted above, Alternative 2 sensibly streamlines this process, and in a fashion that does not diminish the analyses required by EPA after these submissions.

Alternative 3 would impose obligations not required by Annex 1 of the Protocol on Environmental Protection to the Antarctic Treaty (the “Protocol”), thus placing nongovernmental “operators” (as defined by 40 CFR Part 8) under a greater burden of documentation than that faced by the US government for its Antarctic activities. As noted above, I support the notion of a consistent EIA approach for both governmental and nongovernmental activities.

I have serious difficulty with the substantive modifications that would be added under Alternative 4, and agree with the statement/analysis in the DEIS that these changes are inconsistent with both the Protocol and the Antarctic Conservation Act (16 USC §2401 *et seq.*). The hortatory/nonimplementable aspects of Articles 3 and 8 of the Protocol are initially described/analyzed on p. 4-17 of the DEIS. While agreeing with the analysis, however, I would recommend that the stated authority (“Scully 1993”) be added to the reference list found in Chapter 9 of the DEIS.

And I have very serious difficulty with Alternative 4’s requirement that CEEs be required before new sites are visited. I am aware of no scientific authority or other analysis concluding that a visit to a new location in the Antarctic is, *per se*, an environmental disruption tantamount to crossing the threshold of what constitutes “more than a minor or transitory impact.” I therefore agree with the DEIS that a visit to a new site does not automatically trigger a CEE.

The Antarctic Treaty essentially allows *anyone* to visit Antarctica, (assuming he or she can get there safely) and does not proscribe where they may visit, provided there is compliance with the Treaty, its related authorities, and national laws and regulations. Under 40 CFR Part 8, US nongovernmental operators are required to analyze the potential environmental consequences of their activities, and to identify appropriate measures to mitigate (if not eliminate) these potential consequences.<sup>1</sup>

<sup>1</sup> Among other things, this requires a look at which fauna and flora are found at various sites and whether there have been changes in their distribution, abundance, or breeding biology. An integral question under the Protocol is whether any observed changes may be linked to human activities, or whether they are natural variations caused by non-human factors like weather and climate, the extent of winter sea ice, the distribution and abundance of prey species and food sources, or changes in ocean currents.

Commentor:	
O-5	EPA acknowledges that Oceanites does not support any of the other alternatives.
O-6	EPA notes that Oceanites supports Alternative 2, EPA’s preferred alternative, rather than continuing with the status quo under Alternative 1, the no action alternative.
O-7	EPA notes that Oceanites agrees with EPA’s position that the proposed rule should ensure consistency between the governmental and nongovernmental EIA requirements and processes.
O-8	EPA notes that Oceanites agrees with EPA’s analysis of Alternative 4.
O-9	The suggested reference will be incorporated into the Final EIS as appropriate.
O-10	EPA acknowledges the opinions provided by Oceanites as to why a CEE should not automatically be required when any new sites are proposed as possible landing sites. EPA also appreciates the information provided about the Site Inventory project.

## RESPONSE TO COMMENTS

From the standpoint of the Antarctic Site Inventory, I note that our project collects data at both previously *visited* and previously *unvisited* sites. As noted/referenced in the environmental documentation Oceanites has submitted since 1977, the project has adopted a suite of mitigation measures to ensure that any potential environmental consequences stemming from data collection by Inventory researchers are minimized, if not avoided altogether — *wherever* we happen to visit.

As will be repeated below, I take the strong view that Annex I of the Protocol requires an assessment of changes to a site's "initial environmental reference state." The Antarctic Site Inventory project seeks to collect baseline data at key Peninsula sites, hopefully ensuring that environmental changes may be detected in the future. If a change is detected, there arises, then, the more difficult question of analyzing why the change has occurred. Regarding previously *unvisited* sites, I respectfully submit that Annex I cannot operate as intended — and that proper analyses of potential direct and cumulative effects at these sites cannot occur — if researchers' initial site visits are considered to be disruptive *per se*.<sup>2</sup>

Further, I agree with the DEIS comments/analysis regarding the difficulties presented by Alternative 5. The proposed rule would be meaningless if EPA did not have the authority to judge the sufficiency of the environmental documentation it receives. The environmental documentation process would become a useless exercise if EPA could not require modifications when conclusions in environmental documentation are inconsistent with, or unsupported by, proposed activities of the nongovernmental operator. From the standpoint of Oceanites and the Antarctic Site Inventory, the IEEs submitted to EPA since 1977 have enabled a useful interchange resulting in the project's adopting appropriate mitigation measures to assess potential environmental impacts.

### 3. Visitor analyses and census data.

Again, I appreciate EPA's use of various data/information generated by the Antarctic Site Inventory in this rulemaking. In recent months, I and Inventory colleagues have published two peer-reviewed papers, which update some of the analyses and discussions found in the DEIS:

- Naveen, R., et al., 2000. "Censuses of penguin, blue-eyed shag, and southern giant petrel populations in the Antarctic Peninsula region, 1994-2000" (*Polar Record* 36 (199): 323-334, 2000); and
- Naveen, R., et al., 2001. "Zodiac Landings by tourist ships in the Antarctic Peninsula, 1989-99" (*Polar Record* 37 (201): 121-132, 2001)

<sup>2</sup> In a similar vein, I disagree with the view that specified increases in actual or predicted numbers of visitors is sufficient, standing alone, to trigger a CEE. Again, Annex I of the Protocol, as with other EIA regimes, focuses on population changes (i.e. changes to a site's "initial environmental reference state"), irrespective of whether these changes are caused by a greater or lesser amount of nongovernmental activity. It is the responsibility of an activity's proponent to determine, in light of all extant circumstances, which potential effects the activity may cause, and which measures are appropriate to mitigate (if not eliminate) such potential consequences.

#### Commentor:

O-11	EPA acknowledges the opinions provided by Oceanites as to why a CEE should not automatically be required on the basis of specified increases in actual or predicted numbers of visitors.
O-12	EPA notes that Oceanites agrees with EPA's analysis of Alternative 5.
O-13	EPA acknowledges and appreciates receipt of the references to the articles which updates some of the analyses and discussions in the Draft EIS and also appreciates the summary of the information presented in these papers. These references may be incorporated into the Final EIS as appropriate.

The "Census" paper presents penguin, blue-eyed shag, and southern giant petrel census data collected from 21 Antarctic Peninsula locations between 1994-2000. The project has obtained nest counts sufficient to establish a trend in blue-eyed shag nesting populations at five of thirteen sites where the Antarctic Site Inventory has identified nesting shags: the cliffside colonies near Almirante Brown Station, Paradise Bay (NW); Hannah Point, Livingston Island (SH); Jougla Point, Port Lockroy, Wiencke Is. (NW); Petermann Island (SW); and the Orne Islands (NW).

Our analysis indicates declines at all of these sites for the period January 1994 to January 2000. However, we could not reject the null hypothesis that the negative slopes of the log-transformed data were the result of chance alone for Petermann Island and Jougla Point. Declines at the other sites were either highly significant (Almirante Brown,  $P < .001$ ,  $r = .9786$ , 5 df; Orne Islands,  $P < .001$ ,  $r = .9765$ , 4 df) or significant (Hannah Point,  $P < .05$ ,  $r = .7422$ , 6 df). Collectively, nest counts at the Almirante Brown shag colony declined 50%, from 100 to 49, in the 1994-2000 period. Nest counts at the Orne Islands colony went from fifteen nests in November 1994 to zero in December 1999.

The Almirante Brown and Orne Islands colonies are either inaccessible to tourists or receive few tourist visits, suggesting that human disturbance is an unlikely cause of the decline at these sites. In December 1999 at the Orne Islands site, we noted one-meter-deep snow on the shags' nesting ledges. At the other three sites (Petermann Island, Jougla Point, Hannah Point), the shag population now may have stabilized or slightly increased since the decline from 1994-1995 levels.

Collectively, the declines we observed over seven seasons at different sites throughout the Peninsula suggest that blue-eyed shag numbers should be further monitored. These declines may be indicative of some underlying environmental change affecting shag nest success.

The "Zodiac Landings" paper examines the location, intensity, and frequency of zodiac landings by expedition tour ship passengers in the Antarctic Peninsula over ten seasons, 1989-90 through 1998-99.

Between November 1994 and February 2000, at 59 Peninsula locations, we collected data regarding the presence or absence of nesting species of penguins and flying birds, wallows of southern elephant seals, and large patches or beds of lichens and mosses.

These 59 locations include the most heavily visited Peninsula sites, whether by zodiac landings or visitors, in the ten expedition tour seasons between 1989-90 and 1998-99. We used these presence/absence data to rank Peninsula zodiac landing sites according to the number of faunal species and major floral groups recorded, irrespective of whether nests, wallows, and floral groups may be easily accessed by tour ship visitors during a regular zodiac landing.

Five *high diversity* sites were identified: Hannah Point (SH), Penguin Island (SH), the Aitcho Islands (SH), Cuverville Island (NW), and Fort Point (SH). [Note: as

(O-13)

## RESPONSE TO COMMENTS

described in the DEIS, the abbreviations SH, NW, NE, and SW refer to subregional designations used by the Antarctic site inventory project.]

Fifteen *medium diversity* sites were identified: Arctowski Station (SH), Astrolabe Island (NW), Baily Head (SH), Brown Bluff (NE), Half Moon Island (SH), Heroína Island (NE), Port Lockroy (NW), Point Lookout (EI), Orne Island (NW), Paulet Island (NE), Petermann Island (SW), Pléneau Island (SW), Turret Point (SH), Whaler's Bay (SH), and Yankee Harbor (SH).

The remaining 39 sites were determined to be sites with "low" species diversity.

Because of the physical variation in landing sites, species diversity does not equate necessarily to visitors' attaining relatively close views of resident fauna and flora. Using our presence/absence data as a base, we next examined whether disproportionate numbers of zodiac landings occur where visitors may attain this close proximity. For this purpose, we ranked sites in terms of visitors' accessibility to nests, wallows, and floral groups. We assumed that, in the course of a regular tourist landing, sites are more or less sensitive to potential disturbance according to the number of penguin and flying bird species whose nests visitors may access easily, whether or not visitors may access southern elephant seal wallows easily, and whether or not visitors may access easily and possibly trample large patches or beds of lichens and mosses.

Four *highly sensitive* sites were identified: Hannah Point (SH), Penguin Island (SH), the Aitcho Islands (SH), and Turret Point (SH).

Nine *moderately sensitive* sites were identified: Brown Bluff (NE), Fort Point (SH), Gourdin Island (NW), Orne Island (NW), Paulet Island (NE), Petermann Island (SW), Pléneau Island (SW), Georges Point, Rongé Island (NW), and Waterboat Point (NW).

The remaining 46 sites visited by the Inventory were determined to be sites with "low" sensitivity to potential disturbances.

Based on data for the 1998-99 season, we found that visitation is attracted disproportionately to sites with high/medium species diversity or with high/moderate sensitivity to potential environmental disturbance. If this visitation trend continues, the question of whether the frequency and intensity of human visitation translates to actual disturbance of resident fauna and flora needs to be explored fully.<sup>3</sup>

#### 4. Affected environment in the Antarctic Peninsula.

This last point raises a particular concern about the discussion of the "affected environment" found on pp. 2-23 to 2-25 of the DEIS.

The DEIS, particularly Figure 2.15, notes the *general* overlap in the timing of Peninsula tourist activity vis-à-vis the timing of the breeding seasons of Antarctic seabirds. From the broad perspective of the Antarctic Site Inventory, which has

<sup>3</sup> Consistent with previous text and footnotes, my view is that visits to *high/medium diversity* sites *highly/moderately sensitive* sites are not sufficient, *per se*, to trigger a CEE.

#### Commentor:

O-14

EPA acknowledges the opinions provided by Oceanites as to why a CEE should not automatically be required on the basis of diversity or sensitivity factors.

O-15

In keeping with the purpose and need for the proposed rule-making action, EPA's objective in preparing the Draft EIS was to evaluate the environmental impacts of the alternatives for the final rule to be proposed and promulgated by EPA. Thus, EPA intended only to present a general overview of the timing of the breeding season for Antarctic seabirds; it was not EPA's objective to prepare a detailed analysis of the breeding chronologies, locations or site-to-site variations with regard to the timing of Antarctic tourists. EPA does, however, appreciate the information presented.

(O-13)

(O-14)

O-15

O-14

## RESPONSE TO COMMENTS

examined a plethora of Peninsula tourist locations, I therefore would suggest further emphasis in the DEIS noting that breeding chronologies vary rather widely from site-to-site, north-to-south through the Peninsula. The peaks of egg-laying and chick-crèching are not the same through this greater-than-250-mile swath of territory. Further, there may be seasonal variations in breeding chronologies expected at each particular site.

At the end of the day, because environmental documentation requires operators to be concerned with all potential environmental impacts — whether direct or cumulative, short-term or long-term — these variations in breeding chronologies may require operators (and EPA in review of operators' documentation) to make site-specific analyses.

For example, if "Site A" is heavily visited as well as species-diverse and, further, is potentially sensitive to environmental disruptions, these questions may be appropriate: What are the exact timings, intensity, and frequency of tourism visits to "Site A"? How does the site's visitation chronology compare to the expected breeding chronologies of resident fauna? Which times in the breeding regime of each species are considered the most sensitive — whether to nests or nesting adults, or to chicks-of-the-year? The ongoing effort by the Antarctic Site Inventory to collect relevant biological data and information is intended to assist these site-specific analyses at key sites of interest.

#### 5. Description of the Antarctic Site Inventory project.

Data collected by the Antarctic Site Inventory are intended to be used for a variety of assessment and monitoring purposes, including the detection of environmental changes at sites that tourists happen to visit. But, contrary to the suggestion at the top of p. 3-9 of the DEIS, it is not a tourism study *per se*.

I respectfully request this wording be changed to state that: "... one U.S.-based foundation conducts ongoing research in the Peninsula, collecting relevant biological data from season-to-season at a number of sites."

#### 6. Potential environmental impacts at Peninsula visitor sites.

The discussion of potential impacts beginning on p. 5-4 of the DEIS (and mentioned further in footnote 16 on p. 5-8 and DEIS Appendix 25) highlights, once more, the requirements of Annex I of the Protocol. To repeat, my strong view is that Annex I requires an assessment of changes to a site's "initial environmental reference state."

The recent, San Diego workshop on cumulative effects (referenced in Appendix 25) noted that a number of research projects, including the Antarctic Site Inventory, were providing the types of information needed to detect possible long-term cumulative impacts in Antarctica. The data and information produced by these projects will be crucial both to proponents of nongovernmental activities, which must assess potential environmental consequences of such activities, as well as to EPA, which must review the environmental documentation submitted by proponents pursuant to 40 CFR Part 8.

#### Commentor:

O-16	EPA notes the recommended text modification and will edit the Final EIS as appropriate.
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O-17	EPA acknowledges the opinions provided by Oceanites regarding cumulative effects and the need for various research projects.
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(O-15)

O-16

O-17

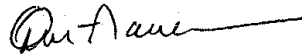
In this regard, the workshop concluded that these various research projects, if continued indefinitely, should detect region-wide changes in potentially affected penguin, seabird, and seal populations, and provide the kinds of information needed to determine whether any changes detected at tourist visitor sites are due to natural processes, fisheries, scientific research, or tourist activities.

(O-17)

\* \* \*

Once again, I appreciate the opportunity to present these comments. Please do not hesitate to call if any questions arise.

Sincerely,



Ron Naveen, President  
Oceanites, Inc.





## ANTARCTIC AND SOUTHERN OCEAN COALITION

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### Comments on

#### Draft Environmental Impact Statement Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica

#### Environmental Protection Agency

April 2, 2001

#### Comments by The Antarctica Project on behalf of the Antarctic and Southern Ocean Coalition

The Antarctica Project (TAP) and Antarctic and Southern Ocean Coalition (ASOC) are profoundly disappointed with the Draft Environmental Impact Statement (EIS) on the Proposed Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica, issued by the Environmental Protection Agency (EPA), in February 2001. TAP's fundamental complaint is that the EIS proceeds on a number of erroneous legal conclusions that color the remainder of the analysis. Indeed, it appears that the EPA's object in preparing the EIS was in justifying certain legal conclusions about its authority under the 1991 Protocol on Environmental Protection to the Antarctic Treaty (1991 Protocol) and 1996 Antarctic Science, Tourism and Conservation Act (1996 Act), rather than a detailed analysis of the scope and impact of nongovernmental activities affecting Antarctica, most notably tourism.

For purposes of brevity, TAP incorporates by reference its comments during the scoping process for the EIS, submitted on July 30, 1997 and August 14, 1998, and attached as an appendix to this communication. Additionally, TAP would observe that it concurs with some aspects of the EIS, most notably its conclusion that the "No Action" Alternative (adopting the Interim Final Rule) is not optimal, as well as its conclusion that Alternative 5 (modifying the Interim Final Rule to eliminate the EPA/NSF concurrence process, enforcement provisions, and PERM requirement) would unacceptably weaken environmental regulation in Antarctica.

#### US ASOC Members:

American Cetacean Society

American Littoral Society

Animal Welfare Institute

The Antarctica Project

The Atmosphere Alliance

Cetacean Society  
International

Defenders of Wildlife

Earth Island Institute

EarthKind

Friends of the Earth - USA

Friends of Whales

Greenpeace - USA

The Humane Society of the  
United States

International Fund for  
Animal Welfare

Monitor Consortium

Monitor International

National Audubon Society

National Parks and  
Conservation Association

National Wildlife Federation

Natural Resources Defense  
Council

Ocean Alliance

Sierra Club

Sierra Club Legal Defense  
Fund

The Wilderness Society

World Society for Protection  
of Animals

World Wildlife Fund - USA

## RESPONSE TO COMMENTS

Commentor:	
TAP-1	EPA notes that comments were provided by The Antarctica Project (TAP) on behalf of the Antarctic and Southern Ocean Coalition (ASOC) and acknowledges that TAP/ASOC are disappointed with the Draft EIS.
TAP-2	EPA notes that TAP's opinion is that the Draft EIS proceeds on a number of erroneous legal conclusions. However, EPA disagrees with this opinion. EPA sought assistance from the Department of State, the Department of Justice and the National Science Foundation on legal, and programmatic, issues.
TAP-3	The purpose of the Antarctic Science, Tourism, and Conservation Act of 1996 is to implement the provisions of the Protocol. The Act provides that EPA promulgate regulations to provide for the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Treaty and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. In keeping with the purpose and need for the proposed rule-making action, EPA's objective in preparing the Draft EIS was to evaluate the environmental impacts of the alternatives for the final rule to be proposed and promulgated by EPA. It was not EPA's objective to prepare a detailed analysis of the scope and impact of nongovernmental activities affecting Antarctica, including tourism.
TAP-4	EPA acknowledges that TAP/ASOC has incorporated two comment letters previously sent to EPA, an undated letter sent in July 1997, and a letter dated August 14, 1998, into its comment letter on the Draft EIS dated April 2, 2001.
TAP-5	EPA notes that TAP generally agrees with EPA's analysis of Alternative 5.

## RESPONSE TO COMMENTS

However, TAP is somewhat mystified as to the process that was used to assign modifications to each alternative, and the rationale behind accepting or dismissing a group of modifications, rather than judging each modification on its merits. This process prevents inclusion of a modification from one of the non-preferred alternatives in the preferred alternative, and makes each set of modifications mutually exclusive from the other sets.

TAP-6

### I. Preliminary Issues

TAP is concerned that the narrative incorporated into chapter 3 of the EIS, on the intensity of Antarctic tourism, relies too heavily on data provided by the Antarctic tour operators' association, IAATO, and individual Antarctic tour operators. It appears to be insufficiently critical and searching of the magnitude and impact of tourism on certain Antarctic environments. Given the direct interest of that sector in predicting that the impacts of their activities on the environment will be minimal, and the significance of this narrative in setting the tone for the rest of the EIS, we believe EPA should have sought to balance these sources with objective data from independent sources without a pecuniary interest in the outcome.

TAP-7

TAP believes that the projections for increases in Antarctic tourism have been deliberately understated, and there is a substantial risk of quantum increases in those numbers and impacts. If such quantum increases materialize within the next 5-10 years it will necessarily cast in doubt the underlying assumptions of the EIS, and perhaps require a new round of regulatory review. At a minimum, and despite the suggestions of the EIS (see at 3-39), a Comprehensive Environmental Evaluation (CEE) may need to be conducted in the near future.

TAP-8

Additionally, TAP is concerned with the suggestion made (EIS at 5-16) that the types of nongovernmental activities that are currently being carried out will typically be unlikely to have impacts that are more than minor or transitory assuming that the activities will be carried out in accordance with the guidelines in Recommendation 18-1. Neither the Protocol nor the 1996 Act assumes that Recommendation 18-1 is the standard, and that compliance with it will ensure minimal impact. Recommendation 18-1 is hortatory not mandatory, and the language is general enough to give operators a great deal of latitude for acting in compliance. Given the current limited Antarctic case history on impacts from any source, it is premature to make *a priori* assumptions about the likely level of environment impact from nongovernmental activities, and unreasonable to minimize them. To presume that these activities will likely have no more than minor or transitory impact is to second-guess what EIA has been established to determine. Its consequences include the corruption of the integrity of the EIA process.

TAP-9

In the following paragraph reference is made to EPA being persuaded that the operators have considered cumulative impacts when making a determination that their activities will not contribute to cumulative impacts, despite the operators admitting in their Initial Environmental Evaluations (IEEs) that they are unable to consider the contributions of their activities to cumulative impacts because there isn't sufficient information -- and the EIS reaches the conclusion that current activities are having no more than minor or transitory consequences. Yet, the EIS (at 5-8) observes that the issue of cumulative impacts remains a concern. There thus appears to be cognitive dissonance in the EIS's handling of this issue.

TAP-10

Commentor:	
TAP-6	EPA believes that Section 4.3 of the Draft EIS adequately describes the process EPA used for delineating the alternatives for the rule to be proposed and promulgated by EPA. This process included EPA's experience with the Interim Final Rule and consideration of the comments and information received during scoping. The Draft EIS individually analyzes the modifications under the alternatives. EPA acknowledges that selection of Alternative 2, EPA's preferred alternative, includes only those modifications associated with Alternative 2. However, EPA believes that, if appropriate, issues considered in modifications not part of Alternative 2 can be further considered within the rule-making process. For example, EPA could consider whether a categorical exclusion provision should be included in the final rule if specific activities can be identified and justified.
TAP-7	In keeping with the purpose and need for the proposed rule-making action, EPA's objective in preparing the Draft EIS was to evaluate the environmental impacts of the alternatives for the final rule to be proposed and promulgated by EPA; it was not EPA's objective to analyze the magnitude and impact of tourism on the Antarctic environment. In the context of the Draft EIS, the purpose of Chapter 3 is to provide an overview of past and present human activity in Antarctica.
TAP-8	EPA notes TAP's opinion regarding the projections for increases in Antarctic tourism. However, EPA disagrees that the projections have been deliberately understated. The projections are based on the available data and information in referenced sources. EPA notes the comment that a CEE may need to be conducted in the near future. As with the Interim Final Rule, the proposed rule would delineate the requirements for the preparation of a CEE.
TAP-9	The statement made in the Draft EIS, and the Preamble to the Interim Final Rule, includes reference to ATCM Recommendation XVIII-1, <u>the relevant provisions of other U.S. statutes, and Annexes II-V to the Protocol</u> (underline added for emphasis). The information in the Preamble is not regulatory, rather it is a guideline for operators. The regulations state the mandatory requirements that must be met by operators and include the criteria for the level of EIA documentation. EPA believes that providing a level of guidance to those subject to regulation does not corrupt the integrity of the EIA regulatory process.

## RESPONSE TO COMMENTS

## II. The EIS's Incorrect Legal Conclusions

Our primary objections to the legal conclusions propounded in the EIS fall into a few categories:

1. *Broadened Definition of "Operator"*. During the scoping process, TAP raised concerns that as currently drafted the Interim Final Rule fails to effectuate Congress' command that EPA regulations extend to cover nongovernmental activities that can be construed as "doing business in the United States." The Interim Final Rule refers to "operators" as "any person or persons organizing a nongovernmental expedition to or within Antarctica". IFR §§ 8.2(b), 8.3(11). The EIS has narrowly construed this to mean that EPA can only regulate nongovernmental activities "where the relevant expedition is organized in or proceeding from the United States." EIS at 4-14. The EIS specifically rejects the idea that operators that are doing business in the United States, by "mere[ly]" selling tickets to U.S. tourists would be covered by the regulations. The EIS somewhat mysteriously suggests that "a non-U.S. based operator could conduct such a level of activity in the United States that it could be deemed to be organizing an activity in the United States, and thus the United States would have jurisdiction in such a circumstance." EIS at 4-14 & 5-26.

TAP would observe that this conclusion is fatally contradicted by the terms of the 1996 Act. Under section 4(a)(6) of the 1996 Act, Congress extended application of the statutory and regulatory scheme to "any person who organizes, sponsor, operates or promotes a non-governmental expedition to the United States, and who does business in the United States." The EIS, in reaching the conclusion it does, simply reads the just-quoted legislative language out of the statute. Under the 1996 Act's clear language, "promot[ing]" an expedition — including public advertisements and sale of tickets — is manifestly covered. Indeed, the additional Congressional extension of coverage to enterprises that "do[] business in the United States," confirms this textual command.

Shockingly, the EIS makes no mention of section 4(a)(6) of the 1996 Act in reaching its legal conclusion. Any Final Regulation made pursuant to the EIS will be manifestly vulnerable to legal challenge as clearly departing from Congress' textual command that EPA regulations extend to "person[s] who organizes, sponsor, operates or promotes a non-governmental expedition to the United States, and who does business in the United States." No amount of *Chevron* deference will save the Final Regulations in this respect.

2. *The Requirement that EIA Documentation Demonstrate Compliance with Applicable Protocol and Statutory Provisions*. The EIA is dismissive of TAP's suggestion that requiring that IEEs or CEEs prepared under the regulations demonstrate compliance with applicable provisions of the 1991 Protocol and 1996 Act. Rather contradictorily, the EIS concludes that such a requirement would not necessarily reduce environmental impacts, EIS 4-15, 5-27, but nowhere explains why.

Additionally, the EIS raises the concern that requiring such documentation would place onerous burdens on non-governmental operators and activities, in excess of those required for governmental activities. EIS at 4-15, 5-28. But nowhere in the 1996 Act is it required that

### Commentor:

TAP-10

EPA is on record that the issue of cumulative impacts, particularly in the Peninsula area, remains a concern. This is why EPA co-sponsored a workshop to better address the issue of possible cumulative impacts associated with ship-based Antarctic tourism. However, EPA also believes that, to date, the conclusions in the IEEs prepared by the U.S.-based operators, including the conclusions for cumulative impacts, have been supported by the information currently available. Further, EPA is unaware of any determinations by the operators that their activities "will not contribute to cumulative impacts." Based on information available to date, EPA believes that the IEEs submitted by the operators have assessed their proposed activities in sufficient detail to determine that they will not have more than a minor or transitory impact on the Antarctic environment, including consideration of cumulative impacts.

TAP-11

This information was considered by EPA in the preparation of the Draft EIS. The authority for EPA's rule-making is 16 U.S.C. 2401 *et seq.*, as amended, 16 U.S.C. 2403a. EPA does not believe that section 2403(a)(6) (e.g., 4(a)(6) of the Act) is germane to this rule-making. EPA also sought legal, and programmatic, assistance from the Department of State, the Department of Justice and the National Science Foundation on this issue in preparing the analysis in the Draft EIS; EPA stands by this analysis.

TAP-12

EPA acknowledges that TAP/ASOC provided information and opinions during scoping regarding the issue of requiring that the EIA documentation demonstrate compliance with applicable provisions of the Protocol and relevant U.S. statutes. This information was considered by EPA in the preparation of the Draft EIS. EPA's rationale for not accepting this proposed modification as a provision in the proposed rule is based on several considerations as discussed in the Draft EIS including the fact that certain provisions of the Act are the responsibility of other federal agencies. Further, rather than imposing a blanket requirement that may add unnecessary burden on the operator, EPA maintains that the EIA documentation provides the mechanism to identify whether a proposed activity raises issues under other obligations of the Protocol or domestic law which need further review by the responsible authority.

TAP-11

TAP-12

TAP-13

## RESPONSE TO COMMENTS

governmental and non-governmental activities be treated at parity in this regard. Despite these irrelevant or unsubstantiated concerns, the EIS somewhat contradictorily notes that the provision of documentation to demonstrate compliance with Protocol and statutory requirements may, in fact, be "a useful mechanism."

(TAP-13)

The most serious defect with the EIS's treatment of this subject is its cavalier interpretation of Protocol Article 3. As stated elsewhere in the EIS, Article 3 is regarded as a dead-letter by the EIS Drafters, with no independent effect. See EIS 4-17 ("Article 3 of the Protocol is implemented through the Annexes to the Protocol and is not capable of direct implementation. Thus, it in and of itself does not impose mandatory requirements."). The EIS's treatment of Protocol Article 3 is consistent with its interpretation of section 4(a)(6) of the 1996 Act. The EIS Drafters have apparently chosen to read-out provisions of the Protocol and Act that are inconvenient or problematic.

TAP-14

The up-shot of all this is that under the EIS and suggested form of the Final Regulations, non-governmental operators will be at liberty to file IEEs or CEEs that disclose substantial risks to the Antarctic environment or associated and dependent ecosystems, and still those activities could be approved. While the EIS is correct to note that the environmental assessment procedures under the Protocol are, at a minimum, intended to emulate those under NEPA, Article 3 of the Protocol and related language in the 1996 Act, intend that such procedures go much further in a substantive manner to regulate non-governmental activities in the Antarctic.

The EIS's insistence on harmonizing the Protocol with NEPA (as reflected at EIS 4-12) thus proceeds from a false assumption. NEPA's starting point is impacts affecting the human environment, while the Protocol's (Article 3 and Annex I) is impacts affecting the natural environment. This difference is nowhere taken into account in the EIS, which proceeds on the blithe assumption that the 1996 Act incorporates into U.S. law an exclusively procedural vision of NEPA, without taking into account the substantive obligations and principles of the Protocol. Nothing in the 1996 Act suggests such a cramped result.

TAP-15

### III. Improper Arguments Advanced in the EIS

The Antarctica Project is also troubled with a number of arguments advanced in the EIS that have the effect of impermissibly narrowing the scope of this regulatory exercise:

3. *Supposed harmonization between regulation of governmental and non-governmental actors.* Constant reference is made in the EIS to consistency between governmental and nongovernmental ELAs, as regards to real (or perceived) regulatory burdens. Nowhere in the 1996 Act is there a requirement that the obligations placed on both entities be the same, or that there be "consistency" between the way the EIA provisions are applied to governmental and nongovernmental operators. See EIS, at 4-17. Nothing in the law requires "consistency." The intent of the 1996 Act is to ensure compliance with the Protocol. Indeed, it is not entirely clear that the EIS takes a consistent view on this. In Section 4.4.2, at page 4-9, it is stated that "the preference is to ensure consistency," while in other places the EIS drops the preference and indicates that this is the intention.

TAP-16

#### Commentor:

TAP-13

EPA acknowledges that the Act does not require consistency between the governmental and nongovernmental EIA processes and regulations (see TAP-16). Operators may, and do, reference compliance with appropriate Protocol provisions and U.S. regulations as planned mitigation measures for their activities, measures which support the level of EIA documentation for the planned activities. Based on experience to date, EPA believes that a mandatory blanket requirement to demonstrate compliance would impose obligations not required under Annex I or the Act, and that it would place unnecessary burden on the operator without necessarily reducing environmental impacts (i.e., requiring consideration of a provision that has no relevance to the activity and, thus, no effect in reducing environmental impacts). Also see TAP-12.

TAP-14

EPA sought legal, and programmatic, assistance from the Department of State, the Department of Justice and the National Science Foundation on the Article 3 issue in preparing the analysis in the Draft EIS; EPA stands by this analysis. Further, as with the Interim Final Rule, under the proposed rule EPA would not "approve" activities. EPA would, in consultation with other interested federal agencies, review the EIA document to determine whether it meets the requirements of Article 8 and Annex I and the regulations.

TAP-15

It is the U.S. government's position that Article 3 of the Protocol does not impose substantive obligations. The analyses in the Draft EIS are consistent with this position. Further, as with the Protocol, NEPA's starting point is the environment. As stated in Title II, Environmental Quality, of the Environmental Quality Improvement Act of 1970 (Pub. L. 91-224, 42 U.S.C. 4371-4374, April 3, 1970), the purposes of this title are to "assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing laws;" and, as further stated in 40 CFR 1500.1, NEPA "is our basic national charter for protection of the environment" (underline added for emphasis).

## RESPONSE TO COMMENTS

Elsewhere in the EIS, language is offered which is redolent of a suggestion that cost/benefit analysis should be applied to the environmental assessment procedures contemplated under the Madrid Protocol and 1996 Act. But nothing in those instruments dictates such a cost-benefit requirement, and it should be categorically rejected.

TAP-17

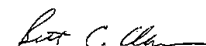
4. *Sanctioned Evasion of Regulatory Requirements.* TAP is concerned with a repeated argument made in the EIS that if enhanced regulation and enforcement is adopted, U.S. operators will simply move to another country to evade such regulation or enforcement. See EIS 5-29, 5-35. TAP regards such an argument as legally illegitimate. As already observed, Congress contemplated such a possibility of evasion when it provided that regulations would apply to "any person who organizes, sponsor, operates or promotes a non-governmental expedition to the United States, and who does business in the United States." 1996 Act, § 4(a)(6). Additionally, it has never been regarded as a legitimate excuse to withhold needed regulation just because of the risk that lawless entities will seek to evade it.

TAP-18

\* \* \* \*

We trust that these comments will be of assistance to the EPA as it proceeds with the development of the Final Rule on Environmental Impact Assessment of Nongovernmental Activities in Antarctica.

Respectfully submitted,

  
Beth C. Clark  
Director

David J. Bederman  
TAP Counsel

Alan Hemmings  
ASOC Senior Advisor

James N. Barnes  
ASOC Counsel

Randall D. Snodgrass  
Director, Government Relations  
World Wildlife Fund

Stephen Mills  
Director, International  
Program  
Sierra Club

## Commentor:

TAP-16

EPA acknowledges that the Act does not require consistency between the governmental and nongovernmental EIA processes and regulations. However, regardless of whether the activities are governmental or nongovernmental, it is the U.S. government that has the responsibility to ensure that the U.S. is able to comply with its obligations under the Protocol. Two separate federal agencies have been charged with this responsibility, the National Science Foundation for purposes of governmental activities and EPA for purposes of nongovernmental activities. Based on experience to date, EPA believes it is reasonable that the governmental and nongovernmental EIA processes be consistent with regard to the requirements of Article 8 and Annex I to the Protocol.

TAP-17

EPA acknowledges that neither the Protocol nor the Act dictates a cost-benefit requirement.

TAP-18

EPA acknowledges that it gave consideration to, amongst other things, the concern that U.S.-based operators continue to do business as U.S. operators and not move their Antarctic business operations to a non-Party country because of any undue burden imposed by the final rule. However, this was one of several considerations that EPA believed was reasonable in the analysis of the alternatives; EPA stands by this analysis.



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Greenpeace - USA

The Humane Society of the  
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International Fund for  
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Monitor Consortium

Monitor International

National Audubon Society

National Parks and  
Conservation Association

National Wildlife Federation

Natural Resources Defense  
Council

Ocean Alliance

Sierra Club

Sierra Club Legal Defense  
Fund

The Wilderness Society

World Society for Protection  
of Animals

World Wildlife Fund - USA

### ISSUES TO BE ADDRESSED IN THE FINAL RULE FOR EIA OF NONGOVERNMENTAL ACTIVITIES IN ANTARCTICA, PROMULGATED UNDER P.L. 104-227, THE ANTARCTIC SCIENCE, TOURISM, AND CONSERVATION ACT OF 1996

The Antarctica Project, Greenpeace, Sierra Club, and World Wildlife Fund, on behalf of the Antarctic and Southern Ocean Coalition, welcomes the opportunity to provide comments on issues to be addressed in the EIS for the Final Rule for environmental impact assessment of nongovernmental activities in Antarctica.

The Protocol on Environmental Protection to the Antarctic Treaty represents a significant shift within the Antarctic Treaty System away from seeing Antarctica as a resource to be plundered and towards its preservation in its pristine state. The Protocol designates Antarctica as a "natural reserve, devoted to peace and science," and sets strict standards for the conduct of all activities in Antarctica. The Protocol is designed to ensure that the protection of the Antarctic environment is the paramount consideration when making decisions about whether and how an activity should proceed. The EIA process is designed to ensure that the spirit of the Protocol is considered by identifying possible environmental impacts and mitigation methods. To ensure that the EIA process for tourism and non-governmental activities faithfully implements the Protocol, the following issues must be considered in promulgation of the Final Rule:

1. **Article 3:** Compliance with the Environmental Principles of Article 3 must be demonstrated in EIA, and should be incorporated into the Final Rule as a requirement.

The heart of the Protocol is Article 3. It articulates a series of environmental principles; which "shall be fundamental considerations in the planning and conduct of all activities in the Antarctic Treaty area." The Article requires that activities take place in a manner consistent with these principles. The principles are expected to guide and shape environmental planning and decision-making for all activities in Antarctica, regardless of whether or not they are covered explicitly by the Annexes. ASOC has always held that these principles are an integral and legally-binding element of the Protocol, and should constitute a binding set of obligations for the conduct of all activities, and must be taken into account in implementing the Protocol.

In particular, Article 3 states that "the protection of the Antarctic environment and dependent and associated ecosystems and the intrinsic value of Antarctica, including its wilderness and aesthetic values and its value as an area for the conduct of scientific research, shall be fundamental considerations in the planning and conduct of all

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## RESPONSE TO COMMENTS

### Commentor:

TAP-19

EPA appreciates the scoping comments provided by TAP, Greenpeace, Sierra Club, and the World Wildlife Fund. All of the information in this letter was considered by EPA in the preparation of the Draft EIS. EPA also notes that TAP/ASOC's undated letter sent in July 1997 is incorporated by reference into its comment letter on the Draft EIS dated April 2, 2001; see TAP-4.

TAP-20

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter; see TAP-14.

TAP-19

TAP-20

## RESPONSE TO COMMENTS

activities in the Antarctic Treaty area. To this end activities shall be planned and conducted so as to limit adverse impacts on the Antarctic environment... [including] degradation of, or substantial risk to, areas of biological, scientific, historic, aesthetic or wilderness significance."

Further, Article 3 requires activities to be "planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the Antarctic environment," taking full account of the cumulative impacts of the activity, whether the activity will detrimentally affect any other activity in the area, whether technology and procedures are available to provide for environmentally safe operations, whether monitoring can be put in place to provide early detection of potential impact, and whether there exists the capacity to respond promptly to accidents. If there is insufficient information upon which to make an informed judgment about a proposed activity, ASOC believes that the precautionary principle must apply.

Finally, Article 3 requires that activities be modified, suspended or cancelled if they result or threaten to result in impacts upon the environment or associated ecosystems inconsistent with Article 3.

The incorporation of the Article 3 principles into the review criteria will allow an understanding of the extent to which the activity will conform with Article 3.

**2. Procedural vs. Substantive regulation:** The Final Rule should provide the authority to prevent an activity from proceeding if unacceptable impacts are identified, or require modification of the activity. Since the Protocol and its Annexes list prohibited activities, and environmental impacts that are to be avoided, in most cases preventing an activity from proceeding should not be an issue. However, there may be occasion when a permitted activity threatens to result in unacceptable impact, and there must be flexibility to require the modification, suspension or cancellation of the activity.

The purpose of EIA is to identify and mitigate as far as possible environmental impacts. This is backed up by a reading of Protocol Article 3, paragraph 2, which states that activities should be planned and conducted to LIMIT adverse impacts, the first paragraph of that Article states "the protection of the Antarctic environment...shall be fundamental considerations in the planning and conduct of all activities....," and paragraph 4 states that "activities...shall take place in a manner CONSISTENT WITH THE PRINCIPLES in this Article; and be modified, suspended or cancelled if they result or threaten to result in impacts upon the Antarctic environment."

The Protocol is designed to ensure that the protection of the Antarctic environment is the paramount consideration when making decisions about whether and how an activity should proceed. Further, the EIA process is designed to ensure that the spirit of the Protocol is considered.

The Protocol's EIA procedures are based on our NEPA procedures. However, whereas domestic caselaw indicates that NEPA is procedural, in the sense that it does not impose

**Commentor:**

TAP-21

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter; see TAP-15.

(TAP-20)

TAP-21

## RESPONSE TO COMMENTS

## Commentor:

TAP-22

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter; see TAP-11.

(by itself) substantive environmental requirements, the Protocol is both procedural and substantive. It is substantive in two ways: (1) by explicitly prohibiting certain activities and requiring permits for others, and (2) by providing in Article 3 basic principles to guide environmental planning. In addition, the NEPA process is "intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore and enhance the environment" (NEPA Regulations, CEQ, July 1, 1986, p. 3). Accordingly, "the primary purpose of an EIS is to...insure that the policies and goals defined in the Act [i.e., to protect, restore and enhance the environment] are infused into the ongoing programs and actions of the Federal Government (p. 10)." Therefore, implementation of NEPA is supposed to ensure that, when activities are undertaken, its (NEPA's) intent to protect the environment is upheld.

(TAP-21)

There is international precedent for basing modification, suspension or cancellation of an activity on the conclusions of EIA. Cf the implementing legislation of Australia (s. 12N)2, and Norway (s. 12). The Netherlands (s. 19 & 20), Sweden (s. 19 & 20) and UK (Regulations s.10(4)(d)) have a similar requirement; however, a permit is also required for all Antarctic activities. In some countries which require a permit for all Antarctic activities, issuance of a permit is dependant on the conclusions of EIA (e.g., Germany, Finland).

**3. Definition of Operator:** The current draft Final Rule applies only to "nongovernmental expeditions to and within Antarctica organized in or proceeding from" the United States. *s. 8.2(b)*. An "operator" is defined as "any person or persons organizing a nongovernmental expedition to or within Antarctica." *s. 8.3(11)*. It has been suggested that the Final Rule should be applied only to tour operators incorporated in the United States.

Such an interpretation would be directly contrary to the language of the Antarctic Science, Tourism, and Conservation Act of 1996 (ASTCA). Congress specifically directed that it was unlawful for "any person who organizes, sponsors, operates or promotes a non-governmental expedition to Antarctica, and who does business in the United States" to fail to take steps to ensure compliance with the Protocol. *ASTCA, s. 4(a)(6)*. At a minimum, this means that the EIA provisions of section 4a of the Act should be applied to nongovernmental expeditions which, even though based outside of the United States, advertize and promote participation by U.S. citizens, accept booking here, and otherwise "do business in the United States."

TAP-22

"Doing business in the United States" is a legal term-of-art used elsewhere in the U.S. code. See, e.g., *8 USC 1375(e)(1)(A)* (mail order brides); *15 USC 16a* (antitrust laws); *26 USC 842 & 4371* (taxation of foreign insurance premiums); *31 USC 5314(a)* (reporting foreign financial transactions). Courts have construed this language to mean that if a person or entity is doing business in the United States to justify the exercise of personal jurisdiction, then it is covered. A number of courts have held that continuous and systematic advertizing and promotion of foreign tours and cruises, as well as the acceptance of booking through U.S. travel agents, constitutes "doing business in the United States."



## RESPONSE TO COMMENTS

## Commentor:

TAP-23

This information was considered by EPA in the preparation of the Draft EIS.

This interpretation is the only permissible one allowed by Congress in the ASTCA. Indeed, the draft Final rule seems to acknowledge this when it defines "person" as any individual or entity "subject to the jurisdiction of the United States." See s 8.3(12).

Any other interpretation would open a cavernous loophole in the application of the Final Rule. An entity, despite doing substantial business in the U.S. (and recall that at least one-third of all Antarctic tourists are Americans), could avoid regulation simply by incorporating elsewhere, perhaps even in a non-ATCP country. If this occurred, it would be impossible to enforce the explicit provisions of section 4(a)(6) of the ASTCA.

In such a case, the only alternative would be to require every U.S. citizen to acquire a permit before travelling to the Antarctic, and thus certifying directly that the provisions of section 4(a)(6) have been satisfied. ASOC asserts that EPA has the authority, like the National Park Service, to regulate entry by any U.S. citizen into Antarctica to ensure compliance with the Protocol's ELA provisions (see *National Park Service Organic Act, 16 U.S.C. 1 et seq* (1988) which states the purpose of the National Park Service is to conserve national parks [and etc.] "...by such means as will leave them unimpaired for the enjoyment of future generations."; *Wilderness Act of 1964, 16 U.S.C. 1131 et seq* (1988) which states that Wilderness Areas are to be administered "...in such manner as will leave them unimpaired for future use and enjoyment as wilderness, so as to provide for the...preservation of their wilderness character....")

(TAP-22)

There is also some international precedent for this in view of the Swedish legislation that became effective on April 1, 1994. This law required all Swedish tourists to have permits (see section 16). Indeed, every such permit application by every tourist was required to contain an environmental impact assessment (section 18(1)). Germany and Finland have similar permit requirements.

This alternative would be unnecessary if the Final Rule were applied to all tour operators who did substantial business in the United States. The regulations could provide a threshold for such a status, perhaps if (in any one year) U.S. citizens constituted a quarter or more of the participants for a particular tour.

4. **Notice and reporting:** Protocol Annex I Article 2 requires that an IEE or CEE contain sufficient detail to assess whether a proposed activity could have an impact. Notification should include, at a minimum, details on passenger numbers, vessel type, all locations and sites to be visited and planned dates of visits. It is necessary to include as much detail as possible about an expedition for the following reasons: it is only in the details that outright violations of the Protocol would be disclosed and potential impacts can get teased out, and alternative actions or mitigation proposed, it is the only way to allow consideration of cumulative impacts, and it provides a record of activity which can be used in the future to determine possible causes of (e.g., environmental, biological) change. The point of EIA is to identify potential impact, predict their likelihood and magnitude, identify alternative actions and mitigation measures, and ultimately to make an informed decision about whether and how to proceed. Although this may be arduous at first, it will become simpler and routine as experience is gained.

TAP-23

## RESPONSE TO COMMENTS

5. **Environmental thresholds and impact characterization, mitigation and monitoring:** Impact thresholds need to be decided on a case by case basis (at least until a body of knowledge is built up). Disclosing all possible impacts/risks is the only way to determine if an activity needs to be altered, or if a potential impact can be mitigated. The Protocol requires that monitoring be put in place to assess and verify impacts, regardless of impact threshold, and to assess the success of mitigative measures.

Thus, the Final Rule should include a requirement to identify mitigation measures, as required by Protocol Annex I, Article 3(2)(g) which requires that a CEE include "identification of measures, including monitoring programmes, that could be taken to minimise or mitigate impacts of the proposed activity...". Mitigation measures could include: control areas and "no-go" areas (e.g., prohibition of visits to colonies during sensitive times in the breeding cycle); limits on group size per expedition leader and on the number of groups at a site at a single time; limits on total number of visits to a site in a single day; avoiding having more than one ship at a site at one time; prohibition of visits to new sites; and education of expedition leaders, passengers and staff.

The Final Rule should also require identification and, as appropriate, implementation, of monitoring programs, as required by Protocol Article 3(d), and Annex I Article 2(2), Article 3(2)(g) and Article 5.

Monitoring to allow assessment of impacts, verify predicted impacts and to facilitate early detection of unforeseen effects of activities both within and outside of Antarctica is required by the Protocol and should be required in the Final Rule. With respect to appropriate monitoring regimes: the Treaty Parties are working to identify monitoring approaches that can best support the Protocol's implementation. At present, the Interim Rule requires that operators report on their present and future activities as well as provide a description of mitigative actions undertaken. Given that there is no monitoring protocol in place within the ATS, we agree that the Final Rule should continue the requirements of the Interim Rule with the proviso that once additional information becomes available, it can be incorporated into the Final Rule.

6. **Timing and distribution of documents:** EIA needs to be done sufficiently ahead of a planned expedition to allow for agency and public comment. The Protocol requires circulation of CEEs to Parties and the CEP 120 days prior to an ATCM, at which meeting it may be discussed. Although the Protocol does not require the circulation of IEEs, if the goal is to produce the best possible document, there is utility in having it reviewed widely. Given the years of experience of most Antarctic tour operators, it is reasonable to expect that they can make assumptions based on past experience concerning passenger numbers, vessels, sites, timing of visits. If the EIA is based on the broadest assumptions—e.g., maximum possible passengers, probable timing of visits, and lists all potential sites, then deviations in actual itineraries would be covered without too much difficulty.

7. **Enforcement and penalties:** Penalties are appropriate only where there is the intent to violate the regulations, especially if an operator has a history of infractions. The most important aspect at present is that an operator complies with the EIA.

TAP-24

TAP-25

TAP-26

Commentor:	
TAP-24	This information was considered by EPA in the preparation of the Draft EIS. EPA notes that TAP agrees with the monitoring requirements in the Interim Final Rule. EPA acknowledges that as monitoring protocols might be developed within the Antarctic Treaty System, the need for revision of the final rule will need to be reviewed by EPA.
TAP-25	This information was considered by EPA in the preparation of the Draft EIS. EPA notes that TAP agrees with the time frames for environmental documentation submission and review in the Interim Final Rule.
TAP-26	This information was considered by EPA in the preparation of the Draft EIS.

## RESPONSE TO COMMENTS

procedures, attempts to identify possible impacts, and puts in place mitigation and response actions. If an accident occurs despite this planning, the operator should have the capacity to respond (mitigation measures, insurance), but should not necessarily be penalized.

TAP-26

8. **Parity vs. non-parity regarding international regulations:** Although there is the concern that if the US regulations are too strict or burdensome the tour operators will move their business to a country that is less strict or has no regulations, this is not a reason to legislate weak requirements. (In fact, cf. implementing legislation and regulations of Australia and New Zealand, which require authorization of activities before they may proceed; s. 12F, J, L and N(3), and s. 10(3) and 12(3) respectively, and of UK which requires a permit for British expeditions to Antarctica; a British expedition includes all expeditions which depart from British territory; s. 3(3) and which requires a permit for activities requiring completion of a CEE; Regulations s.6(6).) We believe that the best way to ensure that this does not happen is to ensure that US citizens are regulated even if the operators are not (cf 3. above).

TAP-27

9. **Simple vs. cumulative impacts/scientific knowledge:** At present, the understanding of cumulative impacts is minimal both inside and outside the Antarctic Treaty System. Nations are beginning to design programs which will give a better understanding of what cumulative impacts mean in terms of environmental management in the Antarctic. IUCN's workshop on Cumulative Impacts in the Antarctic produced recommendations that should help Antarctic operators include consideration of cumulative impacts in their ELAs. For the present, operators should attempt to assess cumulative impacts as far as they are able. As the body of knowledge grows, this additional information should be included in ELAs. This holds as well for other areas of impact assessment where understanding of impacts is minimal, especially as there is not much baseline data with which to compare present states.

TAP-28

10. **Heuristic vs. deterministic evaluation criteria and assessment methods:** Impacts must be assessed on a case by case or site by site basis. For all potential impacts, the key factors usually are where the site (rookery etc) is located, who the visitors are and how they are behaving, the environmental conditions, biological conditions (chicks/eggs present), and if there are or recently were other activities taking place at or near the site. The determination of an impact threshold (e.g., the "acceptable" number of annual visitors to a rookery), must be based on rigorous research, which is subjected to broad scientific review up to the standard of peer reviewed scientific journals. Until such determination is made, the precautionary principle must apply, i.e., visitation should not be increased unless and until there is sufficient information to determine acceptable visitation levels. Impact thresholds should be regularly reviewed as new information becomes available.

TAP-29

11. **Streamlining documentation:** We are supportive of minimizing the paperwork burden on tour operators; however, we believe it would be risky to automatically assume that satisfactory completion of ELA for another country would be sufficient to meet the ELA requirements of this Rule. Thus, operators should be encouraged to provide copies of ELA submissions made to other governments (with translations, if need be) and

TAP-30

Commentor:

TAP-27

This information was considered by EPA in the preparation of the Draft EIS. However, individual U.S. citizens traveling to Antarctica would not be subject to the proposed rule unless they are organizing an expedition such that advance notice is required under Article VII(5) of the Treaty. EPA also sought legal, and programmatic, assistance from the Department of State, the Department of Justice and the National Science Foundation on this issue in preparing the analysis in the Draft EIS; EPA stands by this analysis.

TAP-28

This information was considered by EPA in the preparation of the Draft EIS. (Also see TAP-10.)

TAP-29

This information was considered by EPA in the preparation of the Draft EIS.

TAP-30

This information was considered by EPA in the preparation of the Draft EIS.

## RESPONSE TO COMMENTS

incorporate them by reference. But completion of these documents should not prejudice consideration by EPA. In addition, ASOC supports the undertaking of a "programmatic EIA" to be conducted for similar activities within a specified region. This will decrease the paperwork burden and, more importantly, will allow an assessment of cumulative impacts. In order to be truly useful, this "programmatic EIA" must take account of all other activities occurring in the area.

(TAP-30)

12. **The role of the private sector risk distribution mechanisms:** We believe that commercial instruments such as insurance and performance bonding are useful in implementing the Final Rule. These would require operators to demonstrate compliance with Protocol standards (eg vessel standards) in order to obtain insurance. Performance bonds could work the same way to ensure that expedition procedures are designed to minimize risk to the environment, and stipulated mitigation measures are carried out. Another method for minimizing risk/impact which we would support is requiring certification of expedition leaders, as this would better ensure an awareness and implementation of ATS and Protocol obligations.

TAP-31

13. **Transparency:** Broad public review of all IEEs and CEEs is very important as it is the only way to begin to build a body of common knowledge, and to ensure a quality document. Availability of IEEs should be advertised in the Federal Register and/or on EPA's Web site, and the public should have a minimum of 30 days to provide comments.

TAP-32

14. **Change in an activity:** The Protocol Article 8 requires that the EIA procedures apply to any change in an activity, whether the change arises from an increase or decrease in the intensity of the activity, from the addition of an activity, the decommissioning of a facility, etc. Thus, if there is a significant increase or decrease in the number of tourists planning on traveling to the Antarctic, a new EIA must be prepared. The tour operators are predicting a doubling in the number of tourists within five years. If this holds true, a case could be made that a CEE would be the appropriate level of impact assessment for this period. With respect to the proposed "programmatic EIA" for ship-borne Antarctic Peninsula activities of IAATO members, if this assessment is conducted for multiple years, it would need to be reviewed annually and modified if activities significantly increase or decrease.

TAP-33

15. **Application of Annex I:** Because paragraph 1 of Annex I refers to assessing the environmental impacts of "proposed" activities, there is the implication that EIA is not needed for existing activities (e.g., established bases, structures, runways, etc.) unless the level of activity changes. However, this "exemption" should not be construed to cover "ongoing" activities (e.g., tourism, scientific research projects), which, although they occur annually, are not continuous and are modified annually.

TAP-34

16. **Decision to proceed:** The scientific or other benefits of an activity must be weighed against the possible environmental impacts when deciding whether or not to proceed with the activity. If it is ultimately decided that despite an impact, the activity outweighs the environmental impact, this must be documented. This way there is the assurance that the decision to proceed was deliberative not capricious.

TAP-35

Commentor:	
TAP-31	This information was considered by EPA in the preparation of the Draft EIS. The Draft EIS considered a modification such that if a substantive provision could not be included in the final rule, then include a provision to require insurance and bonding.
TAP-32	This information was considered by EPA in the preparation of the Draft EIS. Under Alternative 2, EPA's preferred alternative, the proposed rule would carry forward the public availability process for IEEs that is in the Interim Final Rule whereby EPA announces the availability of IEEs on its website.
TAP-33	This information was considered by EPA in the preparation of the Draft EIS.
TAP-34	This information was considered by EPA in the preparation of the Draft EIS. As required by the Act, the proposed rule would require EIA documentation for nongovernmental activities, including tourism, for which the U.S. is required to give advance notice under paragraph 5 of Article VII of the Treaty.
TAP-35	This information was considered by EPA in the preparation of the Draft EIS.

## RESPONSE TO COMMENTS

**Conclusion**

The Antarctic Environmental Protocol is a landmark agreement designed to provide comprehensive protection of the world's last great wilderness. Faithful implementation of the Protocol will ensure that the values of Antarctica, as envisioned by the original signers of the Antarctic Treaty, will be strengthened and preserved. Therefore, regulations designed to implement the Protocol's provisions must ensure that the spirit as well as the substance of the Protocol are realized in the conduct of all activities. To achieve this the Final Rule for ELA for nongovernmental activities should:

1. require compliance with the Environmental Principles of Article 3;
2. provide the authority to prevent an activity from proceeding if unacceptable impacts are identified, or require modification of the activity;
3. require the identification and mitigation of possible environmental impacts;
4. apply equally to and reach all U.S. citizens;
5. apply to all tour operators which do business in the U.S.;
6. require sufficient detail within ELA to allow informed judgments about proposed activities;
7. require identification and implementation of monitoring programs;
8. allow for a transparent process by facilitating broad public review of all IEEs and CEEs;
9. require the identification and impact assessment of alternative actions, including the alternative of not proceeding;
10. require the identification of all potential impacts, and their probability of occurring;
11. allow for flexibility to require the incorporation of new information (e.g., on cumulative impact assessment, monitoring programs) as it becomes available;
12. require documentation which explains why the least impacting alternative is not the preferred alternative; and
13. give preference to the precautionary principle when there is insufficient information upon which to make a sound judgment about a proposed activity.

prepared by  
Beth Clark, Director  
The Antarctica Project

TAP-36

**Commentor:**

TAP-36

The information in all 13 items was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter; for these, also see the following:

Item	Response to Comment
1	TAP-14
2	TAP-15
3	TAP-24
4	TAP-27
5	TAP-11
6	TAP-14
7	TAP-24
8	TAP-32
11	TAP-28

## RESPONSE TO COMMENTS



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American Cetacean Society

American Littoral Society

Animal Welfare Institute

The Antarctica Project

The Atmosphere Alliance

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Animal Welfare

Monitor Consortium

Monitor International

National Audubon Society

National Parks and  
Conservation Association

National Wildlife Federation

Natural Resources Defense  
Council

Ocean Alliance

Sierra Club

Sierra Club Legal Defense  
Fund

The Wilderness Society

World Society for Protection  
of Animals

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**RE: COMMENTS ON EPA'S ENVIRONMENTAL IMPACT STATEMENT  
FOR THE FINAL RULE FOR EIA OF NONGOVERNMENTAL ACTIVITIES  
IN ANTARCTICA, PROMULGATED UNDER P.L. 104-227, THE  
ANTARCTIC SCIENCE, TOURISM, AND CONSERVATION ACT OF 1996**

Dear Mr. Montgomery and Ms. Biggs:

Per the Federal Register notice of June 18, 1998 (supplemented by your letter of July 21 allowing a two-week delay in receiving our comments) The Antarctica Project, Greenpeace, Sierra Club, and World Wildlife Fund, on behalf of the Antarctic and Southern Ocean Coalition, welcome the opportunity to provide comments on issues to be addressed in the EIS for the Final Rule for environmental impact assessment of nongovernmental activities in Antarctica. These comments supplement the comments we sent in July 1997, in response to your request for comments following the first public scoping meeting on the Final Rule. We request that you refer to both sets of comments when drafting the Final Rule.

The Protocol on Environmental Protection to the Antarctic Treaty is designed to ensure that the protection of the Antarctic environment is the paramount consideration when making decisions about whether and how an activity should proceed. Activities must be planned so as to limit adverse impacts on the environment and on the basis of prior assessment of possible impacts. In order to faithfully implement the Protocol, impacts identified by the EIA process should be mitigated to the greatest extent possible, and activities which threaten to impact Antarctica's environment must be modified to minimize the possibility of this occurring.

To ensure that the EIA process, within the U.S., for tourism and non-governmental activities faithfully implements the Protocol, the following issues must be considered in promulgation of the Final Rule:

Commentor:

TAP-37

EPA appreciates the scoping comments provided by TAP, Greenpeace, Sierra Club, and World Wildlife Fund, on behalf of ASOC and notes these comments supplement the comments sent in July 1997. All of the information in this letter was considered by EPA in the preparation of the Draft EIS. EPA also notes that TAP/ASOC's August 14, 1998 letter is incorporated by reference into its comment letter on the Draft EIS dated April 2, 2001; see TAP-4.

TAP-38

This information was considered by EPA in the preparation of the Draft EIS.

TAP-37

TAP-38

## RESPONSE TO COMMENTS

1. **Article 3 Compliance:** Compliance with the Environmental Principles of Article 3 must be demonstrated in EIA (as required by this Article), and should be incorporated into the Final Rule as a requirement. The principles are expected to guide and shape environmental planning and decision-making for all activities in Antarctica, regardless of whether or not they are covered explicitly by the Annexes. The incorporation of the Article 3 principles into the review criteria will allow an understanding of the extent to which the activity will conform with Article 3.

Article 3 requires activities to be "planned and conducted on the basis of information sufficient to allow prior assessments of, and informed judgments about, their possible impacts on the Antarctic environment," taking full account of the cumulative impacts of the activity, whether the activity will detrimentally affect any other activity in the area, whether technology and procedures are available to provide for environmentally safe operations, whether monitoring can be put in place to provide early detection of potential impact, and whether there exists the capacity to respond promptly to accidents. The Final Rule must request that sufficient information be included in the EIA to allow an informed judgment to be made about a proposed activity. If insufficient information is included, then the precautionary principle must apply.

2. **Article 3 requires that activities be modified, suspended or canceled if they result or threaten to result in impacts upon the environment or associated ecosystems** inconsistent with Article 3. The Final Rule should provide the authority to prevent an activity from proceeding if unacceptable impacts are identified, or require modification of the activity. Since the Protocol and its Annexes list prohibited activities, and environmental impacts that are to be avoided, in most cases preventing an activity from proceeding should not be an issue. However, there may be occasion when a permitted activity threatens to result in unacceptable impact, and there must be flexibility to require the modification, suspension or cancellation of the activity.

3. **Definition of Operator:** It is our firm view that the Final Rule must apply to all operators doing business within the United States, regardless of whether or not they are incorporated within the United States. The Interim Final Rule currently applies only to operators of "nongovernmental expeditions [to and within Antarctica] organized in or proceeding from" the United States. *s 8.2(b)*. An "operator" is defined as "any person or persons [subject to the jurisdiction of the United States] organizing a nongovernmental expedition to or within Antarctica." *s 8.3*.

It has been suggested that the Final Rule should be applied only to tour operators incorporated in the United States. Such an interpretation would be directly contrary to the language of the Antarctic Science, Tourism, and Conservation Act of 1996 (ASTCA). Please refer to our comments of last year for our detailed analysis of this issue.

Applying the Final Rule to all organizers who do business in the U.S. is potentially the single most important way to ensure that U.S. standards are applied to all U.S. citizens. Without being able to reach non-U.S. based operators who do business in the U.S., the possibility exists that an operator will "shop around" and base themselves in a country to escape compliance with U.S. requirements. This is a concern if that country has standards which are less stringent than U.S. standards and which may not therefore fully implement the Protocol, or if that country is not a signatory to the Protocol, and so imposes no obligations upon an operator. It is our belief that

TAP-39

TAP-40

TAP-41

**Commentor:**

TAP-39

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter and scoping comments provided in July 1997; see TAP-14 and TAP-20.

TAP-40

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter and scoping comments provided in July 1997; see TAP-15 and TAP-21.

TAP-41

This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 2, 2001 letter and scoping comments provided in July 1997; see TAP-11 and TAP-22.

## RESPONSE TO COMMENTS

operators will not be willing to forego the lucrative U.S. market, and will be less likely to relocate solely to evade U.S. obligations.

Applying the Final Rule in this way will have an additional benefit: given the nature of the tourist industry where companies subcontract tours and boats from each other, it will remove the question of who is the organizer, and is that company required to comply with U.S. law. In the case of Antarctic tourism, the answer will always be yes, and it will be up to the tour operators to decide amongst themselves who will fulfill this obligation.

**4. Streamlining documentation -- acceptability of foreign EIAs:** We are supportive of minimizing the paperwork burden on tour operators; however, we believe it would be risky to automatically assume that satisfactory completion of EIA for another country would be sufficient to meet the EIA requirements of the Final Rule. Thus, operators should be encouraged to provide copies of EIA submissions made to other governments (with translations, if need be) and incorporate them by reference.

It is worth noting, however, that most other countries have the ability to require the modification, suspension or cancellation of an activity if it threatens to impact the environment. This means that completion of an EIA for another country does not necessarily imply the acceptance of that activity. Most countries also require a permit prior to the onset of any activities in the Antarctic. Therefore, completion of these documents for other countries should not prejudice consideration by EPA.

**5. Streamlining documentation -- Multi-year EIA:** As noted above, we are supportive of minimizing the paperwork burden on tour operators, and support the completion of multi-year EIAs, on the following conditions:

- (i) a supplement is filed which reports on minor changes;
- (ii) a new EIA is produced if there is a significant change in the activity (some predetermined percentage increase or decrease in e.g., passenger number, could trigger this; and
- (iii) a CEE is completed if the number of passengers in any given year is predicted to meet or exceed 25% of the 1997/98 level.

The Protocol Article 8 requires that the EIA procedures apply to any change in an activity, whether the change arises from an increase or decrease in the intensity of the activity, from the addition of an activity, the decommissioning of a facility, etc. Thus, if there is a significant increase or decrease in the number of tourists planning on traveling to the Antarctic, a new EIA must be prepared. Since the Protocol was signed in 1991, the number of passengers traveling to the Antarctic has increased by 50%. In spite of statements that the number of passengers is expected to remain constant, the tour operators are predicting an additional 40-50% increase in the number of tourists in less than half that time — by the 2000/2001 Antarctic season in three years. This increase follows the 50% increase in the number of passengers since the Protocol was signed in 1991. If this increase holds true, a case could be made that a CEE would be the appropriate level of impact assessment for this period.

**5. Operator's responsibilities:** The Final Rule must be explicit in detailing an operator's

TAP-41

TAP-42

TAP-43

TAP-44

Commentor:	
TAP-42	This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's scoping comments provided in July 1997; see TAP-30.
TAP-43	This information was considered by EPA in the preparation of the Draft EIS. EPA notes that TAP/ASOC supports completion of multi-year EIAs under certain conditions.
TAP-44	This information was considered by EPA in the preparation of the Draft EIS. EPA notes that certain information in this comment is similar to certain comments presented in TAP/ASOC's April 22, 2001 letter; see TAP-12.



responsibility with respect to ensuring that the boat used to transport passengers to, from or within Antarctica is able to comply with the Protocol's standards. The registry of a boat does not determine whether or not it must be in compliance with the Protocol and with U.S. implementing regulations. The nationality of the operator (and hopefully whether an operator does business within the U.S.) determines whether the operator must comply with U.S. regulations. The boat is just one part of the expedition.

(TAP-44)

**Conclusion**

The Antarctic Environmental Protocol is a landmark agreement designed to provide comprehensive protection of the world's last great wilderness. Faithful implementation of the Protocol will ensure that the values of Antarctica, as envisioned by the original signers of the Antarctic Treaty, will be strengthened and preserved. Therefore, regulations designed to implement the Protocol's provisions must ensure that the spirit as well as the substance of the Protocol are realized in the conduct of all activities. We hope that you will consider ASOC's comments of July 30, 1997 along with these comments when preparing the Final Rule for ELA for nongovernmental activities. We stand ready to assist EPA and other government agencies in their preparation of the Final Rule.

prepared by  
Beth Clark, Director  
The Antarctica Project  
August 14, 1998



Patrick Shaw <pat@marineex.com> on 03/08/2001 06:50:52 PM

To: Katherine Biggs/DC/USEPA/US/EPA, Joseph Montgomery/DC/USEPA/US/EPA  
cc: "Denise Landau, IAATO address" <iaato@iaato.org>

Subject: Draft EIS

Dear Katie and Joe,

This is just a quick note to thank you for including us on the distribution list for the draft EIS and to congratulate you on the very fine work that this document represents.

We support your recommendations regarding alternative 2 and look forward to continuing to share information with you. Both Fred Rootes and Olav Locken were in Antarctica this past season which will mean more support in Ottawa for Canadian Antarctic operators in the future.

In the meantime, we intend to continue to follow U.S. operational guidelines and we appreciate your willingness to keep us informed of developments with EPA's final rule.

Yours truly,  
Marine Expeditions

Patrick Shaw



<<Patrick Shaw.vcf>> Patrick Shaw.vc

} ME-1

} ME-2

} ME-3

## RESPONSE TO COMMENTS

Commentor:	
ME-1	EPA notes that Marine Expeditions is a Canadian-based Antarctic tour operator and as such, has not been subject to the Interim Final Rule. EPA intended to retain Mr. Shaw on the mailing list for the EIS and the rule-making process. However, Marine Expeditions filed for bankruptcy in 2001; its future status, and address, as an Antarctic tour operator is unknown.
ME-2	EPA notes that Marine Expeditions supports Alternative 2, EPA's preferred alternative. EPA appreciates the information provided regarding Canadian Antarctic operators.
ME-3	EPA appreciates receipt of the environmental documentation that has been provided by Marine Expeditions in past years for informational purposes.